

MAY 10 2000

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

-----X
 BRIAN A., by his next friend, Bobbi Jean Brooks;)
 TRACY B., by her next friend, Pamela Pallas;)
 JACK and CHARLES C., by their next friend,)
 Linda Lloyd;)
 AMY D., by her next friend, Frank Koon;)
 DENISE E., by her next friend, Linda Lloyd;)
 CHARLETTE F., by her next friend,)
 Juanita Veasy; and)
 TERRY G., by her next friend, Carol Oldham,)
 on their own behalf and on behalf of all others)
 similarly situated,)
 Plaintiffs,)
)
 --against--)
)
 DONALD SUNDQUIST, Governor of the State)
 of Tennessee; and)
 GEORGE HATTAWAY, Commissioner of the)
 Tennessee Department of Children's Services)
)
 Defendants.)
 -----X

COMPLAINT - CLASS ACTION
FOR DECLARATORY AND
INJUNCTIVE RELIEF

Civil Action No. 3 - 00 0445

JUDGE CAMPBELL

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INTRODUCTION

1. This is a civil rights action against Donald Sundquist, as Governor of the State of Tennessee, and George Hattaway, as Commissioner of the Tennessee Department of Children's Services ("DCS") (collectively referred to as "Defendants"), on behalf of a class (the "Class") consisting of all foster children who are or will be in the custody of DCS. This action is also brought on behalf of a subclass of children in the Class who are African-American (the "African-American Subclass").

2. Defendants' systemic failure to fulfill their legal obligations to protect Tennessee's most vulnerable children and provide them and their families with legally required services has subjected the Plaintiff children to significant harm and threatened their safety and well-being, in violation of their rights under the United States Constitution, federal statutes, and federal common law. This action seeks declaratory and injunctive relief against Defendants to stop these continued violations and to ensure that Defendants adequately care for and protect children in state custody as required by law.

3. DCS is removing children from their homes and placing them into a grossly mismanaged and overburdened child welfare system. Defendants routinely take children into DCS custody, only to later discharge them from DCS custody and into circumstances which Defendants know, or should know, render the children vulnerable to danger and place them at risk of harm. While in foster care, children routinely spend years, and often lose much of their childhoods and suffer additional deprivations, as they are moved from one inadequate placement to another without appropriate services, languishing in state custody. Routinely, children are discharged from state custody at the age of 18 without ever receiving any meaningful opportunity for a stable, caring home

or the legally required services that provide the life skills necessary for them to live independently.

4. The DCS foster care system is marked by the following grim facts, among others:

- Children are routinely placed in emergency shelters and other temporary holding facilities for upwards of six months at a time because the state has nowhere else to place them. As of April of 1999, almost 400 children were on waiting lists for needed services and placements.
- The average number of placements for foster children is 3.4, and 23 % — over 2,000 children based on the statewide foster care population — have experienced 10 or more foster care placements.
- The state estimates that 36% of children in DCS custody have been in custody for over two years. Over 17 % have been in custody for over four years. The actual percentage of *foster* children in DCS custody for over two and four years is significantly higher, because the state's estimate includes delinquent children who, as found by the state, spend less time in custody.
- Children 13 years and older — approximately 45 % of all foster children or over 4,000 children — comprise the biggest segment of the DCS foster care population. These children experience the greatest number of placements, often suffer additional abuse while in foster care and face the poorest prospects for adoption or other permanent home.
- According to a state report issued in August of 1999, approximately 800 foster children, for whom parental rights have been terminated, were awaiting adoption. The state has estimated that federal law requires termination of parental rights (“TPR”) and efforts toward adoption for at least 1,100 additional children, but these steps have not been taken. These children are only part of what could exceed 6,000 children who were in foster care for 15 of the last 22 months, as of September, 1998, requiring DCS under federal law to return these children home, or initiate TPR and proceed to adoption.
- Defendants make even less effort to secure appropriate placements and services, and to make reasonable efforts to secure a permanent home for African-American children in state custody, than they do for Caucasian children.

All of the above facts are based on data collection and evaluations performed or commissioned by the Defendants.

5. Foster children in DCS custody include dependent and neglected children, “unruly” status

offenders who have been accused of or have committed specific offenses that are only unlawful for minors (e.g., truancy, drinking alcohol, running away), and children placed into custody voluntarily by their parent(s) or guardian(s). The state reports that there are currently approximately 9,000 children in DCS custody who are dependent and neglected, “unruly,” or whose parent(s) or guardian(s) voluntarily placed them in custody.

6. The state receives more than 30,000 allegations that children have been abused or neglected each year. After investigation, approximately one third of these allegations are “indicated” or found likely to be true, resulting in thousands of children being removed from their homes and taken into state custody each year. Once they enter DCS custody, these children are frequently moved within and among foster care and other placements, based only on the availability of beds or “slots,” without adequate monitoring of their needs and development.

7. Defendants' failure to protect foster children in DCS custody and provide them and their families with appropriate, legally required services has harmed these children and endangered their safety, sense of stability and developmental well-being. As a result of DCS's egregious lack of appropriate foster care placements, DCS often places children in overcrowded, emergency shelters and other emergency temporary placements without needed services or treatment and against their best interest for many months at a time. DCS routinely fails to provide adequate investigation and services to ensure the safety of children who are returned to their parents or placed with relatives, which too often results in further harm or abuse. DCS routinely fails to provide appropriate assessments of children when they enter state custody, and fails to provide appropriate caseworker monitoring and supervision. As a result, children often face abuse and neglect while in foster care, do not receive necessary services and treatment, and frequently spend many years moving from one

inappropriate foster placement to another.

8. Defendants also routinely fail to create and implement appropriate plans and do not take reasonable steps either to reunify children safely with their families or find them an adoptive or other permanent home. As a result, for too many children in DCS custody, a safe return to their family, adoption or other permanent placement in a safe, caring and stable home will never happen. For the thousands of teenagers in DCS custody, meaningful services to enable them to live on their own as adults when they are discharged from state custody at age 18 are virtually non-existent.

9. Defendants have failed to provide the leadership, support, and resources necessary to adequately protect and care for the Plaintiff children as required by law. There has been extraordinary turnover of DCS case managers, who are responsible for monitoring the needs of children in state custody, and for coordinating the delivery of services to these children. Dangerously high case loads make it virtually impossible to adequately monitor children's needs and to ensure that they receive necessary services. Inadequate hiring criteria and grossly inadequate training exacerbate the problem. DCS administrators, supervisors and case managers often lack even the most basic knowledge of child welfare issues, or supervisory skills. An atmosphere of intimidation exists both within DCS and among those involved in the child welfare system, which deters advocacy for children in custody by case managers, foster parents, pre-adoptive parents and others who question the current policies and practices of the Defendants.

10. For many years, the problems suffered by foster children and the many failings of DCS and its predecessor agencies have been repeatedly documented in reports by the Tennessee Commission on Children and Youth, by the Tennessee Comptroller of the Treasury, by advocacy organizations across the state, by the General Assembly which has created special committees to

address the crisis in foster care, by court-approved consultants, and by numerous investigative reports in local newspapers.

11. The state's own financial audits show that gross and repeated financial mismanagement in its child welfare administration have occurred at the same time that the amount of funding for children's services has declined. Millions of dollars already designated and funds otherwise available for child welfare services each year are either unaccounted-for, unused, or wasted due to gross mismanagement and a lack of adequate accounting controls and procedures. The most recent financial audit released in June of 1999 unequivocally found that "[t]he Department of Children's Services' management has been ineffective and has failed to correct the many serious problems noted in prior audits."

12. In August of 1999, the Office of Research of the Tennessee Comptroller of the Treasury issued a report (the "Comptroller's Report") detailing numerous systemic problems resulting from Defendants' mismanagement of the child welfare system, and found, among many other problems, that "Tennessee lacks sufficient placements to meet the needs of children in state custody"; "DCS lacks an adequate management information system to provide accurate data on children in state custody"; "high turnover and caseloads, inadequately trained staff, and under-staffing continue to impede DCS's progress"; and that "it is unlikely that [statistically significant] differences between minority and Caucasian children are based on chance and that race is a factor in whether or not children receive adequate services." These fundamental problems have directly contributed to Defendants' failure to protect and care for the Plaintiff children, and their violations of Plaintiffs' rights.

13. Defendants have been well aware, for at least ten years, of their pervasive and long-

standing failure to adequately serve the children who entirely depend on DCS for their basic safety and their most fundamental needs. Defendants' attempt at reform in creating DCS in 1996, in essentially combining under one agency the juvenile corrections responsibilities and services of the state's Department of Youth Development (DYD) and the child welfare responsibilities and services of the Department of Human Services (DHS), has failed to improve children's lives or improve the efficiency of the system. Rather, as found in the Comptroller's Report, "conflict in organizational culture" — which is dominated by formerly DYD managers and staff — "has . . . contributed to . . . staff turnover, . . . dependent and neglected children treated as delinquents, and . . . role confusion of case managers." Further reform efforts since the creation of DCS to patch fundamental problems have similarly failed.

14. Defendants' pattern of actions and inactions has created a child welfare system infected with widespread systemic deficiencies that prevent Defendants from meeting constitutional and statutory obligations to the Plaintiff children, and violate Defendants' obligations to these children under Tennessee's "State Plan" contract with the federal government. The deprivations experienced by the Plaintiff children have only worsened over time, resulting in the dangerous and unlawful conditions that exist today.

15. Defendants' failure to fulfill their obligations to meet certain physical and mental health needs of children in DCS custody is already the subject of a Consent Decree for Medicaid-Based Early and Periodic Screening, Diagnosis and Treatment Services (the "EPSDT Consent Decree"), filed February 25, 1998, in the action entitled John B., et al. v. Menke, et al., Civil Action No. 3-98-0168 (M.D.Tenn). Plaintiffs in this action do not assert any claims concerning specific physical and mental health care services which are the subject of the EPSDT Consent Decree. However,

Plaintiffs reserve the right to bring such claims in this action as a result of any modifications or such other developments that result in a change in the obligations under and/or the scope of the EPSDT Consent Decree.

JURISDICTION AND VENUE

16. This is an action pursuant to 42 U.S.C. § 1983, alleging violations of the United States Constitution and federal statutes. This court has jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

17. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) because the claims arise in the district.

CLASS ACTION ALLEGATIONS

18. This action is properly maintained as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

19. The Class consists of all foster children who are or will be in the custody of DCS. The African-American Subclass consists of all children in the Class who are African-American. Foster children in DCS custody include dependent and neglected children, “unruly” status offenders who have been accused of or have committed specific offenses that are only unlawful for minors (e.g., truancy, drinking alcohol, running away), and children who were voluntarily placed into custody by their parent(s) or guardian(s).

20. The Plaintiff Class and the African-American Subclass are sufficiently numerous. The Class includes approximately 9,000 children reported by the state to be in DCS custody who are dependent and neglected, “unruly” or were placed into custody voluntarily by their parent(s) or guardian(s). There are approximately 4,400 African-American children in DCS custody. Joinder

of all members of the Class and the African-American Subclass is thus impracticable.

21. The questions of law and fact raised by the claims of the named Plaintiffs are common to and typical of those raised by the claims of the putative Class members. Each named Plaintiff and each putative Class and Subclass member is in need of child welfare services, must rely on Defendants for those services, and is harmed by DCS's systemic deficiencies.

22. Common questions of fact include:

a. whether Defendants fail to provide children in their custody with safe, secure and appropriate foster care placements, as required by law and reasonable professional standards;

b. whether Defendants remove children from their homes and have them committed to their custody, and subsequently place them out of their custody and into circumstances which Defendants know, or should know, render the children vulnerable to danger and place them at risk of harm;

c. whether Defendants fail to provide children in state custody with legally required services, consistent with reasonable professional standards, necessary to prevent them from deteriorating physically, psychologically, emotionally, educationally, or in any other manner while in state custody;

d. whether Defendants fail to create and implement appropriate, legally mandated permanency plans for children in foster care to assure they are properly cared for and either safely reunited with their families or promptly placed in permanent homes, consistent with applicable law and reasonable professional standards;

e. whether Defendants place children in emergency shelters or other emergency, temporary settings for more than thirty days and without appropriate treatment or services and contrary to their individual needs and best interests, in violation of applicable law and reasonable professional standards;

f. whether Defendants fail to provide children in state custody who have disabilities with services appropriate to their needs and the least restrictive placement, as required by law and reasonable professional standards; and

g. whether Defendants' criteria or methods of administering child welfare services have a discriminatory effect on children in the African-American Subclass on the basis of their race, color or national origin.

23. Common questions of law include:

a. whether Defendants' actions and inactions violate Class Plaintiffs' rights, under the First, Ninth and Fourteenth Amendments of the United States Constitution;

b. whether Defendants' actions and inactions violate Class Plaintiffs' rights under the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 620-628, 670-679a (collectively the "Adoption Assistance Act") and regulations promulgated thereunder; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Rehabilitation Act of 1973, 29 U.S.C. §§ 794, 794a; and, regarding the African-American Subclass only, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. and regulations promulgated thereunder, 42 C.F.R. § 80.3 et seq.

c. whether Defendants' actions and inactions violate Class Plaintiffs' rights

as third party beneficiaries to the "State Plan" contract between Tennessee and the federal government pursuant to the Adoption Assistance Act, under federal common law.

24. The legal claims alleged by the named Plaintiffs are typical of those raised by the claims of each and every member of the putative Class. The legal claims alleged by the named Plaintiffs who are African-American are typical of those raised by the claims of each and every member of the African-American Subclass. The harms suffered by the named Plaintiffs are typical of the harms suffered by all children similarly situated.

25. The named Plaintiffs will fairly and adequately protect the interests of the Class. They are represented by attorneys employed by Children's Rights, Inc., a privately funded, non-profit organization with extensive experience in complex class action litigation involving child welfare systems, and by attorneys David L. Raybin and Jacqueline B. Dixon of the law firm of Hollins, Wagster and Yarbrough, P.C., of Nashville, who have extensive experience in civil rights and complex litigation. Plaintiffs are also represented by Richard B. Fields, Esq., in Memphis; Robert Louis Hutton, Esq. and John W. Pierotti, Esq. of Glankler Brown, PLLC, in Memphis; and Wade V. Davies, Esq. of Ritchie Fels & Dillard, PC, in Knoxville, all of whom have extensive experience in civil rights and complex litigation. Plaintiffs' counsel have the resources, expertise and experience to prosecute this action.

26. Each named Plaintiff child appears by a next friend, and each next friend is sufficiently familiar with the facts and circumstances surrounding the child's situation to fairly and adequately represent the child's interests in this litigation.

27. Defendants have acted or failed to act on grounds generally applicable to the Class,

making declaratory and injunctive relief with respect to the Class as a whole appropriate and necessary. Counsel for the Plaintiffs know of no conflicts among members of the Class.

PARTIES

Named Plaintiffs

28. Plaintiff BRIAN A. is a nine-year-old boy who has been in state custody for approximately four years.

29. Brian A. appears in this action through his next friend, Bobbi Jean Brooks, 1824 Foster Street, Memphis, TN 38114.

30. Plaintiff TRACY B. is a 13-year-old girl who has been in state custody for approximately one year.

31. Tracy B. appears in this action through her next friend, Pamela Pallas, 6838 Pull Tight Road, College Grove, TN 37046.

32. Plaintiffs JACK and CHARLES C. are brothers, ages 14 and seven, respectively. Jack has been in state custody for over 11 years, and Charles has been in and out of state custody since birth.

33. Jack and Charles C. appear in this action through their next friend, Linda Lloyd, 531 Whitesboro Avenue, Memphis, TN 38109.

34. Plaintiff AMY D. is a 16-year-old girl who has been in state custody for approximately three years.

35. Amy D. appears in this action through her next friend, Frank Koon, P.O. Box 833, Clinton, TN 37717.

36. Plaintiff DENISE E. is an eight-year-old girl who has been in state custody her entire

life.

37. Denise E. appears in this action through her next friend, Linda Lloyd, 531 Whitesboro Avenue, Memphis, TN 38109.

38. Plaintiff CHARLETTE F. is a five-year-old girl who has been in and out of state custody her entire life.

39. Charlette F. appears in this action through her next friend, Juanita Veasy, Black Children's Institute of Tennessee, 301 Starboard Court, Nashville, TN 37217.

40. Plaintiff TERRY G. is a 17-year-old girl who has been in state custody for approximately two years.

41. Terry G. appears in this action through her next friend, Carol Oldham, 5944 Sedberry Rd., Nashville, TN 37205.

Defendants

42. Defendant DONALD SUNDQUIST is the Governor of Tennessee, and is sued in his official capacity. He is responsible for ensuring that all Tennessee agencies comply with all applicable federal and state law, pursuant to Section 10 of the Tennessee State Constitution. His business address is the State Capital, Nashville, Tennessee 37243.

43. Defendant GEORGE HATTAWAY is the Commissioner of the Tennessee Department of Children's Services, and is sued in his official capacity. In accordance with Tennessee Code Annotated 37-5-105, he is responsible for the proper and efficient operation of DCS, its services and programs; for providing for the care of the children served by DCS; and for directing the placement of children in appropriate state programs and/or facilities, including all contracted and other programs and facilities providing child welfare services, in conformity with all constitutional,

statutory, and regulatory requirements. His business address is the Cordell Hull Building, 436 Sixth Avenue North, Nashville, Tennessee 37243 .

STRUCTURE OF THE TENNESSEE CHILD WELFARE SYSTEM

44. The Department of Children’s Services (“DCS”) was created by the State of Tennessee to protect and provide services to children in and at risk of entering state custody and their families. DCS is legally responsible for providing services to children who are in state custody because they are abused or neglected, because they are accused of a “status offense” or adjudicated “unruly” for committing certain offenses that are unlawful only for a child (such as truancy, running away, or drinking alcohol), or because they are voluntarily placed into custody by their parents or guardians. This responsibility includes providing, for children in DCS custody, as required by law and reasonable professional standards, appropriate assessments and case plans for children; permanency planning for children; safe and appropriate out-of-home placements for children; administrative and judicial reviews of children’s care and progress in foster care; and services to children in foster care, including educational services, family reunification, visitation and family support services, adoption and other permanent placement services, and services to enable children over 16 to live independently when they are discharged from DCS custody.

45. DCS divides the 95 counties that make up Tennessee into 12 administrative regions for the purpose of providing child welfare services. The major urban centers in Tennessee are regions unto themselves, as opposed to more rural counties, several of which may make up a region. Each of 12 Regional Administrators reports to senior DCS management and the Commissioner of DCS, and is responsible for managing the delivery of child welfare services in his or her particular region.

Regional Resource Managers coordinate the availability and delivery of child welfare services in each region.

Entering DCS Foster Care

46. “Dependent and neglected” children are those whose parents are or have been neglectful and/or abusive, including physical and sexual abuse. DCS is responsible for receiving and recording reports of alleged abuse and neglect; conducting investigations of those allegations; making assessments and providing in-home services to families to prevent recurrence of abuse or neglect, when it is safe for children to remain in their own homes; and/or placing children in out-of-home care when it is determined that they are at imminent risk of harm in the care of their parent(s) or guardian(s). Most children who are committed to DCS foster care — 86% according to the Comptroller’s Report — are in custody because of parental neglect or abuse.

47. Additionally, a smaller number of children — 11% according to the Comptroller’s Report — are committed to custody as “unruly” children, because they have committed an offense that would not be a crime for an adult, such as truancy, drinking alcohol or running away.

48. Also, a very small number of children — approximately 2% — are committed to custody because their parents or guardians seek, voluntarily, to have them placed because the child's behavior is unmanageable or because the parents or guardians are unable to meet the child's needs.

49. Petitions to commit a child to DCS custody as dependent and neglected or as “unruly” may be filed with the juvenile court by DCS itself, by law enforcement officials, school staff, parents, family members, or any other person with knowledge of the facts supporting the petition. In certain circumstances, the emergency removal of a child from his or her parent(s) or guardian(s) may take place before a court makes a finding on a petition to commit a child to custody. Otherwise,

dependent and neglected, “unruly” and voluntarily committed children come into custody only through the approval of a juvenile court judge. The 95 counties of Tennessee are divided into 31 judicial districts. Seventeen of these districts have Juvenile Courts, while the remaining 14 districts hear juvenile cases in General Sessions Court (these courts, although not strictly juvenile courts, are considered juvenile courts when adjudicating a juvenile’s case).

Types of Placements for Children in DCS Custody

50. “Placements” as the term applies to children in state custody, and as used by DCS, are the physical facilities, including individual foster family homes and other facilities, where children are housed and receive services. “Foster care” refers to the placements and services provided to dependent and neglected, “unruly” or voluntarily placed children in the custody of DCS.

51. Upon entering custody, children may be placed temporarily in settings where DCS is required to evaluate their needs for the purpose of determining the most appropriate longer-term placement. Such temporary placements include diagnostic and evaluation centers (often referred to as “D&E’s”), emergency foster homes, and medical facilities. Children may also be placed in emergency shelters, when they enter custody or in between other placements while they are in DCS custody, if there is no other available placement for them. Emergency and other temporary placements house foster children and may also include juvenile “delinquent” children — children accused of criminal offenses, including violent and/or sexual offenses. Once an initial assessment of the child is complete, DCS is then required to place the child in a longer-term setting based upon the court’s adjudication and the DCS assessment.

52. Longer-term placements include DCS-operated residential facilities (group homes or other congregate settings and institutional settings), residential facilities managed by contract

agencies, DCS-managed individual foster homes, individual foster homes managed by contract agencies and medical or psychiatric placements. As of June 30, 1998, approximately half of the children in state custody were housed in placements under the direct control of “contract agencies,” which are separate private agencies which contract with DCS to provide certain child welfare services. DCS also operates the Tennessee Preparatory School (TPS), which serves dependent and neglected and “unruly” youth. Group homes include traditional residential group placements as well as “wilderness camps,” which are facilities providing non-punitive camping programs for children ages 12 and older who have difficulty functioning in the home, school or community. DCS also frequently places children who have been committed to state custody into the physical custody of their biological parents or relatives, although they remain in the state’s legal custody. Children in the state’s custody may also be placed in “pre-adoptive” homes, where the intention is for the children to be adopted.

53. Another category of placement involves “continuum of care” contracts that provide placements connected to the state’s system of managed care for physical and mental health services under Tennessee’s Medicaid program called “TennCare.” Funding for these placements is based on a capitated rate (reimbursement rate is set for a bundle of services for a specified population for a predetermined period) and the continuum agency is responsible for providing, under that set rate, a continuum of housing and levels of care for a child during his or her time in custody. After the initial placement by DCS, the continuum agency, in coordination with DCS staff, may move a child to a lower, less restrictive or less treatment-oriented placement (“stepped down”), or to a placement with more security or treatment (“stepped up”).

54. In general, DCS decides where it will place a child in its custody (with several

exceptions); a juvenile court judge may recommend a type of placement, but generally cannot order a child placed in a specific placement. All children in foster care are in the legal custody and are the legal responsibility of DCS. In addition, those children in foster care whose parents' parental rights have been terminated are in the "guardianship" of the State.

Delivery of Services to Children in DCS Custody

55. DCS is responsible for ensuring that each child placed in foster care is provided with a case plan within 30 days of entering custody. The case plan must include the child's status, the child's physical and mental health needs, a goal for permanency, and a statement of responsibilities among the parents, DCS or the contract agency handling the case, and the case manager handling the child's case.

56. At any proceeding of a juvenile court prior to ordering a child committed or retained within DCS custody, the court must first determine whether reasonable efforts have been made to prevent the need for removal or to make it possible for the child to return home. A permanency hearing must be held within 30 days after that determination, and reasonable efforts must be made to timely place a child in accordance with the permanency plan and to complete all steps necessary to finalize a permanent placement for the child.

57. At the hearing in which a court orders a child to be placed in foster care, the judge is required to determine whether the required foster care plan has been prepared and whether the statement of responsibilities has been agreed upon, although the hearing may be extended for up to 30 days. The court must also approve the plan within 60 days of placement. All plans are subject to modification and must be updated annually. Case managers at DCS or contract agencies are responsible for designing and implementing the case plan for children placed with them. In either

case, overall legal and case management responsibility remains with DCS.

58. In addition to preparation and review of the foster care plan, the juvenile court or a “foster care review board” (volunteer advisory boards authorized and established by federal and state law) must review a foster child’s status within 90 days of the foster care placement and at least every six months thereafter for as long as the child remains in foster care, to assess the continuing need and appropriateness of placement, compliance with the foster care plan, and progress toward alleviating or mitigating the factors resulting in foster care placement. Foster care plans must be modified as necessary and presented to the Court at least annually. These administrative and judicial reviews must also project a likely date by which the child may be returned home or placed for adoption or legal guardianship. Additionally, the agency having physical custody of the child must request a hearing within 18 months of the foster care placement, and except for children under an approved long-term foster care agreement, must request subsequent hearings at least every 18 months.

59. DCS categorizes residential placements along a scale of Level I through IV, which describes the intensity of services provided by these placements and the amount of security and staff, moving from the least restrictive and least treatment oriented (Level I) to the most restrictive and most treatment-oriented (Level IV).

60. In addition to placements and services provided directly by DCS and contract agencies, entities known as Community Service Agencies (“CSA's”) exist in each of the state's 12 administrative regions, for the purpose of facilitating the provision of child welfare services. Under contract to DCS, CSA's may perform many child welfare functions at the community level, including assessments of children entering state custody and placement of children. The specific

duties of CSA's are arrived at through negotiation among the CSA and the Regional Administrator in each region. DCS remains legally responsible for the child welfare services performed by the CSA's.

61. A DCS "home county case manager" assigned to each child in foster care, as well as to the child's family of origin, is responsible for ensuring that the child is receiving necessary services and that the child's treatment and permanency plans are being followed. The home county case manager is responsible for monitoring the circumstances of the child's family and their compliance with terms and conditions for regaining custody of the child, as well as ensuring that the family receives appropriate services. However, the home county case manager is not responsible for regular contact with the child. This is the responsibility of a DCS "residential case manager," assigned to each foster care placement, who is also responsible for assisting the foster parents in caring for the children in the home. Residential case managers are required by DCS policy to make face-to-face contact with the child at least once a month regardless of the child's placement.

62. For children in the majority of Tennessee's 95 counties, if the parental rights of a child's parents are terminated, case work responsibility (and the case file) for the child is transferred to a separate DCS division, which is responsible for identifying an adoptive family resource (or other permanent placement) and for finalizing the child's adoption. The involvement of the existing DCS case managers end, and different DCS adoption case managers/adoption workers, located in a different organizational unit within DCS, are assigned to the child. An exception is in Davidson county and the surrounding areas, where the adoption workers are located at the "Center for Adoption," a physically separate entity affiliated with a private contractor. Another exception is a program in Shelby County serving a very small number of adoption-eligible children called the

“Special Needs Adoption Program” or “SNAP.”

LEGAL FRAMEWORK

63. Plaintiffs allege that Defendants are violating their rights under the First, Ninth and Fourteenth Amendments of the United States Constitution; the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 620-27, 670-679a, and regulations promulgated thereunder; the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 et seq.; the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. §§ 794, 794a; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. and its implementing regulations, 42 C.F.R. § 80.3 et seq. (as to the African-American Subclass only); and as third party beneficiaries to Tennessee's "State Plan" contract with the federal government pursuant to the Adoption Assistance Act, under federal common law.

64. These statutes and constitutional standards establish a broad range of general and specific obligations that Defendants are failing to meet in administering Tennessee's child welfare system.

The United States Constitution

65. The Fourteenth Amendment to the United States Constitution guarantees to each child in state custody the substantive due process right to be free from harm and the right to conditions of state custody that are reasonably related to the purpose of that custody. The right to be free from harm includes the right to treatment in accordance with reasonable professional standards, and the right to the services necessary to prevent children from deteriorating or being harmed physically, psychologically or otherwise while in state care, including but not limited to safe and secure foster care and other placements, appropriate monitoring and supervision, case planning and management,

planning and services directed toward ensuring that the child can leave state custody and grow up in a permanent family, and medical, psychiatric, psychological and educational services.

66. The Fourteenth Amendment also guarantees to all children the substantive due process right to protection from state-created dangers. This includes the right not to be removed from their homes and taken into custody and subsequently placed out of custody and into circumstances, which are known or should be known to Defendants, that render the children vulnerable to danger and place them at risk of harm.

67. The Fourteenth Amendment further guarantees the procedural due process right not to be deprived of federal-created or state-created liberty or property interests without due process of law. The federal-law entitlements to which children have a constitutionally protected interest arise from the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 620-27, 670-679a, and regulations promulgated thereunder; the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 et seq.; the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. §§ 794, 794a; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. and its implementing regulations, 42 C.F.R. § 80.3 et seq. (as to the African-American Subclass only).

68. The state-law entitlements to which children have a constitutionally protected interest arise from the Tennessee State Constitution, Article XI, Section 12; and Title 37 of the Tennessee Code and its implementing regulations. These laws require, among other things, that Defendants take steps necessary to:

- a. provide family reunification services in order to facilitate the reunification of the child safely and appropriately within a timely fashion, to each family with a

child in foster care, as provided by statute;

b. ensure, in the circumstances provided by statute, that whenever a child is removed from such child's home and placed in DCS custody, that DCS seeks to place the child safely with a fit and willing relative;

c. prohibit, in the circumstances provided by statute, the return of a child found to be dependent and neglected as a result of brutality or abuse, or as a result of severe abuse, to the custody or residence of any person who engaged in or knowingly failed to protect the child from the abuse;

d. prepare a foster care plan for each child in care within 30 days of the date of foster care placement, with all required elements, and modify and monitor the plan as necessary, as required by statute and regulations;

e. ensure, as provided by statute, that a report is prepared and submitted for each child in foster care on the progress made in achieving the goals set out in the plan, and that administrative or judicial reviews of each child's plan and the progress reports are conducted within 90 days of the date of foster care placement, and no less frequently than every six months thereafter, for so long as the child remains in foster care;

f. ensure, as required by statute, that a permanency hearing is held within 12 months of the date of foster care placement for each child in foster care, and ensure subsequent permanency hearings are held no less frequently than every 12 months or as otherwise required, for as long as a child remains in foster care;

g. prohibit the placement in temporary shelters of delinquent or alleged

delinquent children with children alleged to be or adjudicated dependent and neglected, as provided by statute;

h. restrict to 30 days the time children may spend in temporary placements without needed services, as provided by statute;

i. arrange, in the circumstances provided by regulation, for appropriate visitation for sibling groups or other extended family members;

j. provide each child access to appropriate education as required by the Tennessee Department of Education, statute and regulations; to assure appropriate placement for children with disabilities, DCS must provide access to appropriate education services as required by the state board of education;

k. license, inspect, staff and supervise all placements as required by statute and regulations, and ensure each home is equipped and staffed to properly provide for the physical, social, moral, mental, educational or religious needs of all children kept therein;

l. ensure that no greater number of children are kept at any one time on the licensed premises than is authorized by the license, and that no child is kept in a building or place not authorized by the license;

m. restrict the capacity of emergency shelters as provided by regulations;

n. provide maternity services, in the circumstances provided by regulations, for each child in foster care; and

o. in the case of a child who has reached 16 years of age, determine and provide, in the circumstances provided by statute and regulations, the services

needed to assist the child to make the transition from foster care to independent living.

69. The First and Ninth Amendments of the United States Constitution guarantee the rights to privacy and family integrity, and grant children the right not to be removed from their families absent a showing of compelling necessity, and, once removed, the right to services in accordance with reasonable professional judgment reasonably likely to effect reunification and otherwise enable children to leave state custody and grow up in a permanent family.

**The Adoption Assistance and Child Welfare Act of 1980, as amended by the
Adoption and Safe Families Act of 1997**

70. Under the Adoption Assistance and Child Welfare Act of 1980 as amended by the Adoption and Safe Families Act of 1997 (collectively the “Adoption Assistance Act”), states receive certain federal reimbursements so long as they enter into a plan approved by the federal Department of Health and Human Services and comply with its terms. The State of Tennessee receives federal funding under the Adoption Assistance Act and has submitted such a plan, which is a legal contract between the federal government and state (the Tennessee “State Plan” contract), agreeing to provide child welfare services pursuant to the obligations under the Adoption Assistance Act.

71. The Tennessee “State Plan” contract includes the obligations to the Plaintiff children under the Adoption Assistance Act and also incorporates provisions of Tennessee Code § 37 governing DCS, and Tennessee statutes and rules governing practice in state juvenile court, including as applicable the state general sessions, circuit, and chancery courts sitting on juvenile matters, and each statute’s implementing regulations. These incorporated provisions have the force of law and are binding on the Defendants. Plaintiffs and Class member children eligible for those

child welfare services are the intended beneficiaries of the Tennessee “State Plan” contract.

72. The Adoption Assistance Act requires Defendants, as a condition of receiving federal funds, to implement and operate in Tennessee:

- a. a service program designed to help children, when safe and appropriate, return to the families from which they have been removed, and when this is not possible, to be placed for adoption, for legal guardianship, or in some other planned, permanent living arrangement; 42 U.S.C. §§ 671(a)(16), 675(1)(B), 671(5)(B); and
- b. an information system from which the status, demographic characteristics, location and goal of every foster child can readily be determined; 42 U.S.C. § 622(b)(10)(B).

73. The Adoption Assistance Act and relevant regulations further require that if Defendants accept federal funds, they shall take the steps necessary to ensure that:

- a. foster family homes and child care institutions are licensed, re-licensed and operated in conformity with appropriate national standards; 42 U.S.C. § 671(a)(10);
- b. each child in need of a foster care placement is placed in the least restrictive, most family-like setting available, consistent with her best interests and individual needs; 42 U.S.C. § 675(5)(A);
- c. each foster child with a permanency goal of other than return home is provided with written documentation of the steps taken to locate and place the child in an adoptive home or other permanent placement and the steps taken to finalize such a placement; 42 U.S.C. § 675(1)(E);

d. each foster child is provided with a written case plan, containing specified elements, that is reviewed and updated at specified intervals, and that services are provided in accordance with that plan; 42 U.S.C. §§ 671(a)(16), 675(1) & (5)(B);

e. each foster child receives proper care while in state custody and that she, her parents and her foster parents receive the services necessary to address her needs and to assure her return home or her referral to an alternative permanent placement; 42 U.S.C. §§ 671(a)(22), 675(1)(B);

f. the status of each foster child is reviewed once every six months either administratively or judicially to determine the safety, continuing necessity for, and appropriateness of placement, the extent of compliance with the child's case plan and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care; 42 U.S.C. §§ 671(a)(16), 675(5)(B), 622(b)(10)(B)(ii); and

g. each foster child receives a permanency hearing by a family court no later than 12 months after her original placement and periodically thereafter to determine and evaluate the status of and plan for the child; 42 U.S.C. § 675(5)(C).

74. The Adoption Assistance Act and relevant regulations further require that if Defendants accept federal funds for children in their custody, they must file a petition to terminate parental rights in accordance with a statutory time schedule, and concurrently identify, recruit, process and approve a qualified family for adoption, regarding: a child who has been in foster care under the responsibility of the state for 15 of the last 22 months; a child who a court of competent jurisdiction has determined to be abandoned; and a child in custody where the parent is determined by a court

of competent jurisdiction to have committed an enumerated crime involving child abuse. Defendants are not required to file a petition to terminate parental rights only if: the child is being cared for by a relative; there is a documented, compelling reason why termination would not be in the best interest of the child; or, the child's family has not been provided, consistent with the time period in the case plan, the services that have been deemed necessary to safely reunify the child with her family in the circumstances where reasonable efforts to unify are required. 42 U.S.C. § 675(5)(E).

The Americans with Disabilities Act and The Rehabilitation Act of 1973

75. The Americans with Disabilities Act ("ADA") and the Rehabilitation Act of 1973 prohibit discrimination in federally funded programs against individuals with handicaps or disabilities. These laws require that programs such as child welfare and foster care be administered in a manner that enables children with handicaps or disabilities to fully participate in and receive the benefits of the programs and to be placed in the least restrictive appropriate setting.

Title VI of the Civil Rights Act of 1964

76. Under Title VI of the Civil Rights Act of 1964, any state program or activity which receives federal financial assistance is prohibited from excluding from participation, denying benefits to or subjecting to discrimination, any person on the basis of race, color, or national origin. As Defendants receive financial assistance for children in their custody, Title VI applies to Defendants and to the administration and provision of child welfare services by DCS.

77. Additionally, the United States Department of Health and Human Services has issued regulations, pursuant to Title VI, that prohibit any state programs or activities which receive federal financial assistance from utilizing criteria or methods of administration which have the effect of

subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing the accomplishment of the objectives of the programs with respect to individuals of a particular race, color, or national origin.

FACTUAL ALLEGATIONS REGARDING NAMED PLAINTIFFS

A. BRIAN A.

78. Brian A. is a nine-year-old boy who currently lives in an emergency shelter in Shelby County, where he has lived for the past seven months because DCS has failed to provide him with an appropriate placement. As a result, Brian waits indefinitely for a longer-term placement, without any social work plan or goal to get him out of foster care and into a permanent home, and without necessary treatment, case work services or appropriate schooling, in a grossly inappropriate and overcrowded facility meant for extremely short stays of under thirty days. He has little or no contact with any of his five siblings. Brian wants desperately to get out of the shelter and into a safe, stable and permanent home, and to spend more time with his brothers and sisters.

79. Brian was removed from his biological parents' custody in 1996 along with five of his siblings because of abuse and neglect, due in part to his parents' drug abuse. Brian was initially placed in an individual foster home in the winter of 1996 with one sibling and a total of six other foster children who shared one small bedroom. He lived there until the summer of 1999, when he began developing increasingly difficult emotional and behavioral problems in school and at home, and his foster parent asked DCS to remove him from their home; all the while, DCS failed to provide appropriate services to address his problems.

80. DCS removed Brian from that foster home and placed him in another foster home in September of 1999, where his behavioral and emotional problems at home and at school became

severe, and DCS continued in its failure to provide appropriate services for his problems. He tried several times to run away during school, and also while in day care. School officials regularly called Brian's foster parents to pick him up from school for disruptive behavior, including starting fights and destroying furniture and other property in his classrooms. At the request of his foster parents, Brian received several counseling sessions, where he stated that his prior foster parent, with whom he lived for three years, regularly disciplined him by beating him and the other children with a walking cane.

81. After less than two months, his foster parents determined that Brian needed more specialized care and informed DCS that they could no longer handle him. Although DCS informed Brian's foster parents that he would be removed from their home and placed in a therapeutic foster home, DCS instead removed him and placed him in an emergency shelter in late October of 1999. DCS has left him in the shelter for the past seven months; he is still living there today.

82. In the shelter, Brian lives with over twenty other boys, ages six to sixteen, including many who were removed from violent emergency situations as well as boys accused of delinquent offenses including violent crimes and sexual assaults. The cramped, overcrowded living arrangements in the shelter are designed for only short emergency stays, as placements in shelters are required by law not to exceed thirty days. He receives no therapy to address the emotional trauma he has experienced: he has only been evaluated by a counselor at the shelter who determined that he has "anger problems." There is no active permanency plan or plan of care that DCS has developed or is implementing for him. Brian is not receiving appropriate and required case work services. He is also being deprived of his right to an appropriate education. "School" consists of two classrooms in which all twenty boys, ages six to sixteen, are taught together by two instructors,

and where meaningful and legally required educational services are impossible, because the classrooms are designed only to keep a high number of children of widely different ages and abilities busy during their very short stays.

83. Brian has no opportunity to form lasting friendships or attachments in the shelter. During his entire seven months in shelter care, his only contact with any of his siblings involved a one day visit last Christmas and another approximately one month ago, when his sister Karesha's foster mother volunteered to take him home for a night, and returned him to the shelter the next day. While Brian enjoys these rare visits with his sister, he knows the happiness of being with a family member and in a loving home is only short-lived and that he will soon be back in the shelter.

84. Although he has been in DCS custody for approximately four years, Brian has not been legally freed for adoption. Defendants have failed to provide necessary services to determine if he can be safely returned to his mother, and have failed to take reasonable steps to find him an adoptive or other permanent home or to make him legally available for adoption. He has had a few isolated, supervised visits with his biological mother in DCS offices over the past four years, and almost no contact with his siblings. Brian, who is African-American, has been deprived of his rights while in foster care to an appropriate placement and services, and to reasonable efforts to secure a permanent home for him, in part, because Defendants make even less effort to secure these rights and benefits for African-American children in DCS custody than they do for Caucasian children.

85. Defendants' actions and inactions have caused him, and continue to cause him, irreparable harm. Defendants have violated Brian's constitutional and statutory rights by failing to protect him from harm; by failing to provide necessary services and an appropriate permanent placement for him once he entered foster care; by placing him in an emergency shelter or other

emergency, temporary placement for more than thirty days, and contrary to his individual needs and best interests and reasonable professional standards; by placing him at undue risk of harm by placing him with dangerous children, including children accused of violent crimes or sexual offenses, in overcrowded shelters or other emergency temporary placements; by failing to make timely and meaningful casework contacts and monitor his progress in foster care in accordance with reasonable professional standards; by failing to treat him in accordance with reasonable professional standards; by failing to provide him with services necessary to prevent him from deteriorating physically, psychologically, emotionally, educationally or otherwise while in state custody; by failing to support the family relationship by not providing child-sibling visits as appropriate; by failing to provide appropriate management and supervision while in DCS custody in accordance with reasonable professional standards; by failing to provide case management and planning in accordance with reasonable professional standards; by failing to develop and implement a viable permanent plan that will allow him to leave foster care and secure a safe and appropriate permanent home in accordance with reasonable professional standards; by failing to conduct appropriate administrative and judicial reviews of his care and progress as required by law and reasonable professional standards; by utilizing criteria or methods of administration which have the effect of subjecting him to discrimination on the ground of his race and which have the effect of substantially impairing the accomplishment of the objectives of Tennessee's child welfare system as it applies to him; and by excluding him from participation in, or denying him the benefits of, or subjecting him to discrimination under a program receiving federal financial assistance, on the basis of his race.

B. TRACY B.

86. Tracy B. is a 13-year-old girl who currently lives in a foster home in Coffee County.

Her current home is at least her fifteenth foster care placement since she was taken into DCS custody only one year ago, because Defendants failed to provide an appropriate assessment of her needs upon entering DCS custody and have failed to provide appropriate placements, and services in those placements, to meet her needs. At a DCS “staffing” in January of 2000, DCS first determined that after thirteen placements and continued emotional and behavioral problems, Tracy should be placed in a Level II foster home. No Level II placements were or are available, so Tracy remains on a waiting list for an appropriate placement. Her current permanency goal is reunification with her mother, but DCS has failed to take reasonable steps and provide appropriate services to facilitate her return home to her mother.

87. Tracy first entered state custody when she was four years old after she was sexually abused by her biological father. The state placed her in a series of foster homes for four years; her siblings — Jerry (then seven years old), Jeffrey (four), David (two) and Marla (infant) — remained in her mother’s home. DCS returned physical and legal custody of Tracy to her biological mother in 1997 (her father was out the home permanently). She remained at home with her siblings, her biological mother and a new stepfather until May of 1999. During that time Tracy began starting fights, drinking, missing school and stealing, and was increasingly emotionally unstable and difficult for her mother to manage. In May of 1999, Tracy reported an incident of corporal punishment by her mother to her school, after which Tracy and all of her siblings were removed from their mother’s custody and placed into foster care.

88. The day Tracy made the report of corporal punishment, all five siblings were placed by DCS with their grandmother. Within two months, the two youngest children were returned to their mother’s custody. The oldest, Jerry (now 17), has been moved back and forth among delinquency

and foster care placements and remains in DCS custody. Jeffrey (now 13) was raped by several other children in a foster home (he remained in that home for six months afterwards and the incidents were not reported to his mother), and was eventually placed in a wilderness camp where he was physically abused by a staff member, shortly after which legal and physical custody were returned to his mother in February of 2000.

89. Many of Tracy's 15 foster home placements have lasted only a day or two before they disrupted. Tracy has also run away from several foster homes, because she has been so unhappy in them. Tracy has been returned several times to foster homes from which she had previously been ejected, because Defendants have failed to seek and secure an appropriate foster home or other placement for her, and have failed to appropriately monitor and supervise her care while in state custody. Instead, DCS places children such as Tracy wherever a bed or slot is available, rather than based on the child's needs.

90. Tracy's permanency plan goal since she entered DCS custody in May of 1999 has been reunification with her mother. Tracy's mother was required to complete a parenting course and participate in visits with her daughter. Although Tracy's mother completed the parenting course, DCS has failed to take reasonable steps and provide services to facilitate a safe reunification between Tracy and her mother. For at least the last six months, DCS has failed to provide any regular plan for visits between Tracy and her mother, and has not arranged even a single family therapy session. Tracy's mother is unable to arrange visits because DCS regularly fails to inform her before, and even shortly after, they move her daughter to another foster home. Tracy has seen her siblings only once in the last six months because Defendants have failed to provide services to Tracy to help maintain these important family ties.

91. Due to Defendants' actions and inactions, Tracy's emotional and behavioral problems have deteriorated significantly over her 15 successive foster placements over the past year, and she has been, and continues to be, irreparably harmed. She has no sense of stability in her life and little or no contact with her family. She does not receive needed counseling or therapy to address her emotional problems, and does not have the opportunity to receive an appropriate education, at least in part due to her constantly changing foster placements. Tracy has been certified to receive special education services, but DCS has failed to seek special education services for her. DCS has failed to take reasonable steps to either reunify her with her biological mother, as set forth in her permanency plan, or to place her in an alternative permanent home.

92. Defendants have violated Tracy's constitutional and statutory rights by failing to protect her from harm; by failing to provide her with appropriate foster care placements while in state custody, as required by law and reasonable professional standards; by failing to provide her with legally required services, consistent with reasonable professional standards, necessary to prevent her from deteriorating psychologically, emotionally, educationally or otherwise while in state custody; by failing to provide her with an appropriate and comprehensive assessment when she entered state custody; by failing to take reasonable steps and provide appropriate services to reunify her with her mother; by failing to support the family relationship by not providing parent-child and child-sibling visits as appropriate; by failing to provide appropriate case management, planning, and supervision while she is in state custody, consistent with reasonable professional standards; by failing to conduct appropriate administrative and judicial reviews of her care and progress as required by law and reasonable professional standards; and by failing to make timely and meaningful casework contacts and failing to monitor her progress while in foster care, all in accordance with reasonable

professional standards.

C. JACK AND CHARLES C.

93. Jack and Charles C. are brothers who are currently ages 14 and seven, respectively. They are part of a sibling group of 11 children (ages one to 14) from the same biological mother, all of whom were successively removed from her custody because of abuse and neglect stemming from her long time addiction to and abuse of crack cocaine. Jack currently lives in a group home in Shelby County, his twenty-third foster home as a result of Defendants' gross failure to provide appropriate placements and services for him while in DCS custody. His brother Charles has been living in a therapeutic foster home in Davidson County since 1997, when an inappropriate reunification attempt left him permanently brain damaged and physically and developmentally handicapped.

94. Jack lived with his biological mother under dangerous and neglectful conditions until one day, at the age of three, he reported his mother to the police in connection with her abuse of crack cocaine. DCS (then DHS) removed him from his mother's custody and placed him in a foster home, where he lived until the age of seven. During that time period, his behavior became increasingly violent; Jack regularly threw raging tantrums and acted out in school. Despite numerous requests to DHS from his foster mother, DHS failed to provide any counseling services for three years, when he was diagnosed with mental illness and placed on medication which made him hallucinate. During one episode, he climbed up on a roof and threatened to jump off. After Jack was hospitalized for three months in a mental health facility, DHS decided not to return him to his original foster parent.

95. After his brief hospitalization (in 1992), DCS moved Jack through 22 foster care

placements. DCS has performed several psychological evaluations of Jack during his 11 years in state custody, but has failed to provide him with the necessary services and appropriate placements to address his serious emotional problems. Now 14, Jack currently lives in a group home in Shelby County where he has been for a little over one year. He is in the eighth grade in public school, where his emotional problems and constant uprooting have greatly impeded his educational development. He remains on prescription medication for behavioral control, but does not receive needed regular counseling and therapy to address his ongoing emotional problems. Although Jack is a special needs/disabled child due to his emotional and behavioral problems, DCS has failed to seek and secure educational and other support services necessary to allow him to participate fully in the child welfare system or to benefit from its services.

96. Recently, Jack suffered a dislocated knee, torn ligaments and many bruises when staff in the group home improperly restrained him during an emotional outburst, because Defendants' have failed to provide adequate training and supervision in group homes to ensure the safety of children in such homes.

97. Jack has been legally free for adoption since 1996, when his biological mother's rights were terminated as to him. He continues to languish in state custody, because Defendants have failed to take reasonable steps to find him an adoptive or other permanent home. Jack, who is African-American, has been deprived of his rights while in foster care to an appropriate placement and services, and to reasonable efforts to secure a permanent home for him, in part, because Defendants make even less effort to secure these rights and benefits for African-American children in DCS custody than they do for Caucasian children.

98. From the time Jack was briefly hospitalized at age six until he was 12, DCS failed to

provide services to allow him any visits or other contact with his many brothers and sisters. Then, two years ago, at the request of his original foster parent, Jack had several visits with his siblings at her home and last year he began weekend overnight visits there. DCS has denied a more extensive visitation arrangement because of the many children (six foster and two adoptive) in that home, although DCS has asked the original foster parent if she would adopt Jack. While the number of children already living in the home and Jack's severe emotional problems would make adoption in that home extremely difficult, the foster parent has asked DCS what financial, counseling or other service support would be available if she were to adopt Jack, but has received no response. DCS recently informed Jack's original foster parent that Jack might be moved yet again.

99. Jack knows his current placement can only be temporary and that he will likely be moved soon for the twenty-fourth time. He is filled with anger, hatred and frustration over his constant uprooting, and desperately wants to be placed in a permanent, stable, loving home. He has recently been writing poems about being "tossed around" and "stepped on," and in one poem he wrote that he would "rather be dead."

100. Charles, now seven, was removed from his biological mother's custody at birth when he tested positive for cocaine resulting from his mother's continued crack addiction. Charles was placed in the same foster home where his brother Jack was first placed, and lived there with three other siblings and several other foster children until the age of five. At that time, Charles was in a regular kindergarten class, and despite some behavioral difficulties and emotional challenges stemming from his drug poisoning at birth, he was living happily and maintained close relationships with his foster mother, siblings and other foster children. At that time, Charles' permanency goal was reunification with his mother, although DCS failed to take reasonable steps to evaluate whether

reunification was an appropriate goal, and failed to provide appropriate services to facilitate a safe reunification, including helping his mother address her drug addiction and teaching her to better care for her children.

101. While his mother continued to abuse crack cocaine, DCS removed Charles at age five, along with a four-year-old-sister, from their foster home and placed them back with their mother without taking appropriate steps to determine whether the children could be left safely in their mother's care. Once the children were returned home, DCS failed to provide appropriate services and supervision to ensure the children's safety, and not long after his return, Charles ingested some of his mother's drugs, fell into a violent seizure and suffered massive brain damage. In addition to their failure to provide appropriate reunification services to facilitate a safe return, Defendants also failed to provide adequate case work services and monitoring to ensure Charles' safety once he was returned. Instead, DCS placed Charles into circumstances it knew or should have known were extremely dangerous. He and his sister were removed from their mother's custody after Charles' ingestion of his mother's drugs, and his sister was placed back with the original foster parent. The permanent brain damage Charles suffered as a result of that incident prevented his return to his foster mother and siblings. DCS has since moved him in and out of several foster care placements and he currently lives in a therapeutic foster home in Davidson County. Charles suffers from severe and permanent mental, physical and emotional deficits, and wears a helmet while he is awake to prevent him from harming himself. Recently, at a rare visit with his siblings and original foster mother, Charles was unable to recognize any of these people with whom he was so close before the incident.

102. Charles' mother's parental rights were terminated as to him in 1997. He has been in

several foster placements since then, but Defendants have not made reasonable efforts to seek and secure a permanent adoptive family for him. Charles, who is African-American, has been deprived of his rights while in foster care to an appropriate placement and services, and to reasonable efforts to secure a permanent home for him, in part, because Defendants make even less effort to secure these rights and benefits for African-American children in DCS custody than they do for Caucasian children.

103. As a result of Defendants' actions and inactions, Jack and Charles have been and continue to be irreparably harmed. Defendants have violated Jack's and Charles' constitutional and statutory rights by failing to protect them from harm; by failing to provide them with safe, secure and appropriate placements; by taking Charles into state custody and subsequently placing him into circumstances which Defendants knew or should have known would have and did render him vulnerable to danger and placed him at risk of harm and which in fact resulted in severe and permanent harm to him; by failing to provide appropriate supervision to ensure the safety of children placed in group homes; by failing to provide them with legally required services, consistent with reasonable professional standards, necessary to prevent them from deteriorating physically, psychologically, emotionally, educationally or otherwise while in state custody; by failing to implement appropriate, legally mandated plans of care and permanency plans to assure that Jack and Charles are cared for and placed in permanent homes, consistent with reasonable professional standards; by failing to conduct appropriate administrative and judicial reviews of their care and progress as required by law and reasonable professional standards; by failing to make a comprehensive assessment of Jack when he entered state custody; by failing to take reasonable steps to ensure that Jack leaves foster care or achieves permanency within a reasonable time; by failing

to make timely and meaningful casework contacts and failing to monitor these children while in foster care; by failing to make a reasonable determination about whether Charles' reunification was appropriate, and by failing to make a reasonable assessment and take reasonable steps toward providing the services necessary to determine if he could be safely reunified with his parent; by failing to adequately monitor Charles' safety and progress when returned home with his mother; by failing to support the family relationship by not providing child-sibling visits as appropriate; by failing to provide case management and planning in accordance with reasonable professional standards; by failing to provide Jack and Charles, as children with disabilities, with the least restrictive placement and services appropriate to their particular needs as required by law and reasonable professional standards; by utilizing criteria or methods of administration which have the effect of subjecting them to discrimination on the ground of their race, and which have the effect of substantially impairing the accomplishment of the objectives of Tennessee's child welfare system as it applies to them; and by excluding them from participation in, or denying them the benefits of, or subjecting Jack and Charles to discrimination under a program receiving federal financial assistance, on the basis of their race.

D. AMY D.

104. Amy D. is a sixteen-year-old girl from East Tennessee who currently lives in a Level III facility in Knox County. Since entering DCS custody in 1997 as a dependent and neglected child, DCS has moved her in and out of fourteen foster care placements — including individual foster homes, a shelter, hospitals and Level II and Level III placements — because Defendants failed to provide an appropriate assessment of her needs when she entered DCS custody, and have failed to provide appropriate placements and services to address her serious emotional problems.

Defendants have also failed to provide appropriate medical services to Amy while in DCS custody, and have grossly over-medicated her, causing her serious harm. Amy is an intelligent girl but is poorly prepared to take care of herself once she reaches 18 and is discharged from DCS custody. She has not received appropriate services to enable her to live on her own, although she desperately needs them.

105. Amy lived much of her early childhood in Virginia, where she and her two older sisters were removed from their parents' custody for three years because of abuse and neglect, after which they were returned to their parents' custody. The family settled in East Tennessee in 1992. In 1997, Amy's father petitioned to place her into DCS custody as an "unruly" child, but at the hearing on the petition, the court found Amy to be dependent and neglected. One form of abusive punishment used by Amy's father involved throwing a mattress on top of her and then beating her by kicking the mattress.

106. DCS first placed Amy in a diagnostic and evaluation ("D&E") center for 30 days while her father's "unruly" petition was pending. The court then made its finding of dependency and neglect, and DCS then placed Amy in an emergency shelter in Elizabethton. From there, DCS moved Amy to an individual foster home in Knox County which was not equipped to address her needs. That placement lasted less than one month, because Amy's behavior became increasingly uncontrollable while DCS failed to provide her with services for her emotional problems. Her foster parents requested that DCS find her another home, and DCS removed her and placed her in another foster home in the Tri-Cities region. That placement lasted five months, as Amy continued to act out and began setting fires in the home. DCS again failed to provide Amy and her foster mother with desperately needed services to address Amy's deteriorating emotional problems. DCS removed

her from that home and placed her in another D & E for 30 days, where it was determined that Amy required a Level III placement.

107. Contrary to her needs and best interests, and contrary to its own assessment of her needs, DCS then placed Amy in a regular foster home, which lasted only one day, and then in another foster home, which lasted only two weeks, as her untreated problems became more unmanageable. DCS then moved Amy to a hospital for another 30 day evaluation, where it was again determined that she required care and services in a Level III facility. DCS then managed to place Amy in a Level III facility, but after only two weeks DCS uprooted her again, and placed her in a Level II group facility. Due to Defendants' continued, gross failure to meet her needs, Amy's condition further deteriorated.

108. The staff at the Level II facility could not control Amy's behavior, and she was placed on heavy medication which made her hallucinate and hear voices telling her to hurt herself and others. DCS moved Amy to a hospital for a five day evaluation, and she was returned to the Level II facility, where her mental and physical condition worsened. The hallucinations became more frequent, her personal hygiene became poor, and in a short time Amy's weight more than doubled, exploding from 115 to over 240 pounds. DCS moved Amy to a hospital for yet another 30 day evaluation, where it was determined, among other things, that Amy was emotionally disturbed, that medications were likely contributing to her hallucinations and delusions, and that major disruptions were contributing to her dire emotional condition. During the evaluation, she was visited in the hospital by her CASA worker, who found her living in a dirty bedroom with food and garbage all over the floor, and so over-medicated that she was slurring her speech and could barely form words. Her obesity continued to be entirely ignored and unaddressed by the staff.

109. After that 30 day evaluation, DCS moved Amy into her fourteenth foster placement, a Level III facility in Knox County, where she has remained since that time. Defendants' goal for Amy is "permanent foster care." She remains heavily medicated, and is often separated and restricted from contact with other children in the facility. Amy still does not receive appropriate services to address her emotional problems, and DCS has failed to provide her with necessary services to enable her to live on her own when she is discharged from DCS custody at age 18. She is a bright girl (a recent IQ test indicated a measure of 120) but her emotional problems prevent her from fully participating in school. Her April 1999 permanency plan noted that Amy can find nothing to motivate her. Amy has written a song that includes the line: "I wonder if anybody will ever see the good that is within me."

110. As a result of Defendants' actions and inactions, Amy has been and continues to be irreparably harmed. Defendants have violated Amy's constitutional and statutory rights by failing to protect her from harm; by failing to provide her with safe, secure and appropriate foster care placements, as required by law and reasonable professional standards; by failing to treat her in accordance with reasonable professional standards; by failing to provide an appropriate and comprehensive assessment of her needs when she entered DCS custody; by failing to provide her with legally required services, consistent with reasonable professional standards, necessary to prevent her from deteriorating physically, psychologically, emotionally or otherwise in state custody; by failing to provide appropriate supervision; by administering inappropriate and harmful medications to her while in DCS custody; by failing to conduct appropriate administrative and judicial reviews of her care and progress as required by law and reasonable professional standards; by failing to provide her, as a child with disabilities, with the least restrictive placement and services

appropriate for her needs; and by failing to provide her with legally mandated independent living and transitional services to enable her to live on her own once she is discharged from DCS custody at age eighteen.

E. DENISE E.

111. Denise E. is an eight-year-old girl, who was removed from her mother's custody at birth due to abuse and neglect and placed in a foster home in Shelby County, where she has lived her whole life. Denise lives in the same foster home as seven of the siblings of Jack and Charles C., but is unrelated to them. Other than a visit by a case manager during the first week of her life, for her first eight years in state custody, Denise was never seen by a case manager; did not receive any services to monitor her care, needs or development; was not provided with appropriate judicial and administrative reviews of her care while in DCS custody; and did not have permanency plans or plans of care created and implemented to address her needs and to minimize her stay in foster care.

112. Denise was legally freed for adoption over five years ago, when her parents' rights were terminated as to her. However, for five years, Defendants failed to take reasonable steps to seek or secure an appropriate adoptive home for her. She met an adoption worker — after eight years in DCS custody — for the first time this past year, but DCS is still failing to take reasonable steps to find her a permanent home. Denise, who is African-American, has been deprived of her rights while in foster care to an appropriate placement and services, and to reasonable efforts to secure a permanent home for her, in part, because Defendants make even less effort to secure these rights and benefits for African-American children in DCS custody than they do for Caucasian children.

113. Denise currently lives with five other foster children and two adopted children. During her lifetime, DCS has placed as many as 15 foster children at one time in her home. While her foster mother continues to make extraordinary efforts to provide individual love and care to Denise and the other foster children, DCS has failed to maintain a reasonable number of foster children in that home so that they can each receive the attention they need.

114. DCS recently asked Denise's foster mother if she would adopt Denise. While the number of children already living in her home would make Denise's adoption in that home unlikely, Denise's foster mother recently asked DCS what financial, therapeutic or other services and supports would be available if she were to adopt Denise, but DCS has not responded. Denise wants desperately to be placed permanently in a stable, loving home, but DCS continues to deprive her of the opportunity to form a permanent relationship by failing to make reasonable efforts to recruit or identify a family that could provide an appropriate permanent home for this child.

115. As a result of Defendants' actions and inactions, including their virtually complete failure to provide any social work, monitoring or support services for Denise for virtually her entire life in DCS custody, Denise has been and continues to be irreparably harmed. Defendants have violated Denise's constitutional and statutory rights by failing to protect her from harm; by failing to make timely and meaningful case work contacts and failing to monitor her progress in foster care; by failing to provide case management, planning and supervision in accordance with reasonable professional standards; by failing to provide her with legally required services, consistent with reasonable professional standards, necessary to prevent her from deteriorating psychologically, emotionally or otherwise in state custody; by failing to create and implement appropriate, legally mandated plans of care and permanency plans to assure that she is cared for and placed in a

permanent home, consistent with reasonable professional standards; by failing to conduct appropriate administrative and judicial reviews of her care and progress as required by law and reasonable professional standards; by utilizing criteria or methods of administration which have the effect of subjecting her to discrimination on the ground of her race, and which have the effect of substantially impairing the accomplishment of the objectives of Tennessee's child welfare system as it applies to her; and by excluding her from participation in, or denying her the benefits of, or subjecting her to discrimination under a program receiving federal financial assistance on the basis of her race.

F. CHARLETTE F.

116. Plaintiff Charlette F. is a five-year-old girl from Davidson County. She has been in and out of foster care for her entire life, and has been living in the same foster home, along with her brother John, for the past two-and-one-half years. She has suffered repeated abuse and neglect — including severe and repeated sexual abuse by her biological mother, a grandparent and several uncles — as a result of Defendants' failure to provide adequate services, monitoring and supervision necessary to ensure the safety of children who are returned to their parents or placed with relatives. She has been moved through at least six inappropriate foster placements and has not received — and still does not receive — desperately needed regular counseling and therapy to address her emotional problems, because Defendants failed to provide an appropriate assessment of her needs when she entered DCS custody, and failed to provide appropriate placements and services to meet her needs while in DCS custody. Charlette wants desperately to be placed in a safe, permanent and loving home.

117. Charlette's mother was a prostitute, and she and her brother John frequently witnessed

their mother engaging in sexual acts for money, and frequently watched pornographic films while in bed with their mother and her “clients.” Charlette and her brother were removed from their mother’s custody four years ago because of abuse and neglect, including sexual abuse by their mother and her boyfriends. DCS then placed them with their grandparents, without appropriate investigation and evaluation before they were placed to ensure that their grandparents could safely care for them. Defendants also failed to provide appropriate case manager visits and monitoring of their care once they were living in their grandparents’ home, and both Charlette and her brother were sexually abused by their grandfather and several of their uncles. DCS eventually removed them from their grandparents’ custody and placed them — again without adequate services to ensure their safety — back with their mother, where they were abused, and removed once again. DCS then placed Charlette and her brother in a series of inappropriate foster homes, where they failed to receive needed therapy and counseling to address their deteriorating emotional problems stemming from their repeated abuse.

118. DCS has failed to provide Charlette with appropriate services and placements to meet her needs. She was recently placed on medication at night to help her sleep (she suffers from recurring nightmares), but DCS has failed to provide her with appropriate counseling or therapy to address her emotional problems. Charlette’s brother John exhibits sexually aggressive behavior, often against Charlette, for which he has not received appropriate therapy and counseling services. Charlette and her brother frequently speak about the sexual acts they witnessed their mother perform as a prostitute, and the sexual abuse they suffered by their family. Currently in a regular kindergarten class, Charlette often becomes removed and deeply withdrawn. She performs poorly in school.

119. Charlette and her brother were freed for adoption in August of 1999, when their mother's parental rights were terminated as to them. Charlette continues to languish in foster care, because Defendants have failed to take appropriate steps toward finding her a permanent home. Her current foster parent was first contacted by an adoption case manager from the Center for Adoption in Nashville several months ago, but DCS is still failing to take reasonable steps to find Charlette an adoptive or other permanent home. Her foster parents have informed DCS that they would consider adopting Charlette and her brother if they can receive assistance for the very expensive care and services the children require. When Charlette and her brother were first freed for adoption, their foster parents requested information regarding adoption assistance; now almost a year later, DCS has still told them nothing about it.

120. Charlette, who is African-American, has been deprived of her rights while in foster care to an appropriate placement and services, and to reasonable efforts to secure a permanent home for her, in part, because Defendants make even less effort to secure these rights and benefits for African-American children in DCS custody than they do for Caucasian children. She expects that she will eventually be uprooted again, and she wants desperately to be placed in a permanent, safe and loving home.

121. As a result of Defendants' actions and inactions, Charlette has suffered, and continues to suffer, irreparable harm. Defendants have violated Charlette's constitutional and statutory rights by failing to protect her from harm; by failing to provide her with safe and appropriate foster care placements; by taking her into state custody and subsequently placing her into circumstances which Defendants knew or should have known would have and did render her vulnerable to danger and placed her at risk of harm and which in fact resulted in severe harm to her; by failing to

appropriately evaluate reunifying her with her parent, and failing to monitor her safety and progress when returned home; by failing to provide her with legally required services, consistent with reasonable professional standards, necessary to prevent her from deteriorating physically, psychologically, emotionally, educationally or otherwise while in state custody; by failing to appropriately investigate her foster care placements, including placements with relatives, before placing her; by failing to implement appropriate, legally mandated plans of care and permanency plans to assure that she is cared for and placed in a permanent home, consistent with reasonable professional standards; by failing to conduct appropriate administrative and judicial reviews of her care and progress as required by law and reasonable professional standards; by failing to make timely and meaningful social work contacts and failing to monitor her progress while in foster care; by failing to provide case management, planning and supervision in accordance with reasonable professional standards; by utilizing criteria or methods of administration which have the effect of subjecting her to discrimination on the ground of her race, color or national origin, and which have the effect of substantially impairing the accomplishment of the objectives of Tennessee's child welfare system as it applies to her; and by excluding her from participation in, or denying her the benefits of, or subjecting her to discrimination under a program receiving financial assistance, on the basis of her race, color or national origin.

G. TERRY G.

122. Terry G. is a seventeen-year-old girl from Cheatham County who currently lives in a Level III facility in Davidson County. Over the past year, she has gotten pregnant, was attacked and beaten up by another teenager, and eventually lost her baby, all while in DCS custody, because Defendants have failed to ensure that the Level III facility in which DCS has placed her provides

adequate services and supervision to maintain the safety of children who live there and to ensure an absence of violence in the facility. Terry has been in at least seven inappropriate placements since entering DCS custody approximately two years ago, because Defendants failed to provide an appropriate assessment of her needs when she entered state custody, and have failed to provide appropriate placements and services to meet her serious emotional and behavioral problems. Terry will turn 18 in December and will be discharged from DCS custody without the skills necessary to live on her own, because Defendants have failed to provide legally required services to teenagers over 16, such as Terry, while they are in DCS custody.

123. Terry was diagnosed at age five with attention deficit/hyperactivity disorder (ADHD). She was hospitalized at ages 12, 13 and 14 in connection with her behavioral and emotional problems. Terry was placed in DCS custody approximately two years ago as a result of increasingly uncontrollable behavior, which included numerous incidents of running away, fighting, drinking, missing school, and stealing. After failing to appropriately assess her needs and to locate a placement that met her needs, DCS first placed Terry in a Level I foster home, which disrupted in one day, and then placed her into another foster home which lasted about two months. DCS then moved her in and out of a Diagnostic and Evaluation Center and several Level III facilities, each lasting no more than a few months. DCS continued to place Terry where beds were available as opposed to where her needs could be met, and moved her into another inappropriate individual foster home which lasted only a few months. DCS then placed her in a Level III facility for several months, then moved her once again to her current Level III facility 10 months ago.

124. Terry's behavior was difficult to control when she began her current placement. She was diagnosed with bipolar disorder and was heavily medicated with multiple psycho-tropic

prescriptions which regularly caused her to sleep most of the day. At one point, her prescriptions were dramatically altered, which caused her to act violently. During this period, Terry was regularly placed in restraints.

125. Approximately six months into her current Level III foster placement, Terry became pregnant by a teenage boy in DCS custody who was living in the same facility. During her pregnancy, Terry received no parenting classes or other mother-child or maternity services other than medical check-ups; instead she was put on a waiting list to be placed in a mother-child facility in Knoxville. Several months into her pregnancy, Terry was attacked and severely beaten up by another teenage girl in her facility and subsequently lost the baby.

126. Terry continues to receive inappropriate and inadequate access to education. While she was heavily medicated, she routinely slept through school hours. Her frequent movement from one inappropriate placement to another has greatly impeded her educational development. Although Terry is a special needs/disabled child due to her emotional and behavioral problems, DCS has failed to seek and secure educational and other support services required by law to allow her to participate fully in the child welfare system.

127. DCS has grossly failed to provide Terry with legally mandated and necessary skills training to enable her to live on her own when she turns 18 and is discharged from DCS custody. She receives no such training at her current Level III placement. This failure by DCS, made even worse by Terry's behavioral and emotional problems, leaves her ill-prepared to live independently. DCS will thus place her in considerable danger when she is discharged from custody in December.

128. DCS has also failed to provide appropriate and required family support services to allow Terry to maintain critical family ties with her mother and to address the issues that led to her

placement in custody. Other than an emergency session at her mother's request upon learning of Terry's recent pregnancy, Terry has received no family therapy services with her mother for at least ten months, despite numerous requests by Terry and her mother for these services. The loss of her pregnancy, her ongoing emotional problems and her upcoming discharge from custody have made this service failure by DCS particularly damaging.

129. As a result of Defendants' actions and inactions, Terry has, and continues to be, irreparably harmed by Defendants, and will be placed in great danger and at risk of harm when she is discharged from DCS custody when she turns eighteen.

130. Defendants have violated Terry's constitutional and statutory rights by failing to protect her from harm; by failing to provide her with safe, secure and appropriate foster care placements, as required by law and reasonable professional standards; by failing to provide social services in connection with her pregnancy and its loss; by failing to provide independent or transitional living services to prepare her to live on her own when she is discharged from state custody; by failing to provide her with legally required services, consistent with reasonable professional standards, necessary to prevent her from deteriorating physically, psychologically, emotionally, educationally or otherwise while in state custody; by failing to provide her, as a child with disabilities, with the least restrictive placement and services appropriate for her particular needs as required by law and reasonable professional standards; and by failing to monitor her progress while in foster care; and by failing to conduct appropriate administrative and judicial reviews of her care and progress, all of which are required by law and reasonable professional standards.

FACTUAL ALLEGATIONS REGARDING SYSTEMIC DEFICIENCIES

131. The experiences and presently unmet needs of the named Plaintiffs are merely

examples of the Defendants' systematic failure to fulfill their legal responsibilities to children in DCS custody and are representative of the Defendants' failures to comply with the law with respect to the Plaintiff children. They illustrate Defendants' long-standing pattern and practice of illegal actions and inactions, and their deliberate indifference and failure to exercise professional judgment regarding, the health, safety and welfare of the Plaintiff children. Any previous attempts Defendants have made to remedy these systemic failings have been superficial, insufficient and ineffective. Children are still not receiving services to which they are legally entitled and that meet applicable legal and reasonable professional standards.

132. The grave conditions faced by children in DCS custody and Defendants' systemic failings have been extensively and repeatedly documented for over a decade. Efforts dating back to the 1980's to improve DCS's predecessor agencies resulted in the 1991 "Foster Care Task Force" as well as the "Children's Plan." Numerous recommendations and initiatives created by these efforts have never been implemented, and many subsequent reports through the present have repeatedly identified the same problems. For example, the report prepared by the Office of Research of the Tennessee Comptroller of the Treasury and released in August of 1999 (the "Comptroller's Report") concluded that numerous fundamental problems continue to prevent Defendants from meeting their obligations to children in DCS custody.

133. Additionally, the Tennessee Commission on Children and Youth (TCCY) annually evaluates services provided to children in state custody. Since 1994, TCCY's Children's Program Outcome Review Team (C-PORT), has annually conducted evaluations of children in state custody with a statistically valid sample of over 500 cases. These C-PORT Reports have repeatedly identified uncorrected systemic deficiencies at DCS.

134. An annual Performance Audit of DCS, conducted through the Office of the State Comptroller, evaluates the financial effectiveness in DCS's delivery and management of child welfare services. The Performance Audits have also highlighted systemic deficiencies at DCS.

135. Finally, over the last several years, local media state-wide have repeatedly reported on the grave systemic problems at DCS. For example, in November of 1998, the Nashville Tennessean published a series of articles reporting that children and parents across the state wait too long for services, that turnover rates for caseworkers are unmanageably high, and finding "a dispassionate bureaucracy more concerned with paperwork than with children's futures and a judiciary that either doesn't fully understand its watchdog role in the process or is too bogged down with other matters to keep a close eye on the progress of children through the system." A December, 1998 article in the Memphis Commercial Appeal found that children languish in care, and that state officials routinely do not know where children in their custody are placed, the condition of children in their custody or whether the child welfare programs they administer are effective. An article in the Kingsport Times-News in March of 1999 reported that Juvenile Court officers stated that "the state runs a 'bed-driven' system that sticks children wherever there is a bed, regardless of the appropriateness, rather than using a more costly needs-based system." An article in the Knoxville News Sentinel in September of 1999 also reported on Defendants' harmful practice of placing children based on available beds rather than the child's needs, and further found that children linger in temporary placements sometimes for as long as 12 to 14 months and that there are repeated instances of vulnerable children being housed with dangerous children charged with delinquent offenses.

136. Although Defendants have long been aware of the problems set forth herein, they have

failed and refused to exercise their authority to ensure that identified problems are remedied.

A. Assessments and Case Plans

137. In order to provide a child with an appropriate placement and adequate services, DCS is required by law to complete an assessment and case plan for every child in care. The case plan (also known as a “permanency plan” and a “plan of care”) must be developed within 30 days of the child’s placement, and must be approved by a judge within 60 days of the child’s placement and at least every six months thereafter. This plan is required to not only state the child’s permanency planning goal, but also to provide all of the social, emotional, and physical history of the child, and detail a plan for providing services and for achieving the permanency planning goal.

138. Thorough assessments and adequate case plans are essential to meet the requirements of federal law, to ensure the provision of appropriate reviews for children and to minimize the length of stay in foster care. According to TCCY, an adequate assessment should generally include a complete collection of pertinent information pertaining to a child and family, enabling the case manager to create an appropriate long-term view for services and to design a permanency plan which meets the child’s needs. Initial assessments are also supposed to determine what other more specialized assessments may be required for a particular child.

139. DCS fails to provide adequate assessments of children entering care. As a result, children are being denied appropriate and essential treatment, and their time in custody is being unnecessarily prolonged.

140. According to the 1998 annual C-PORT Report issued by TCCY, the number of children whose assessments were inadequate nearly doubled from the previous year to 27%. This was the lowest level of performance ever achieved by DCS on this measure in the five years the C-

PORT Reports have been presented. Problems included incomplete or non-existent social histories; lack of psychological evaluations for children clearly in need of them; and lack of appropriate follow-up evaluations in areas such as alcohol and drug assessments, speech and language assessments, and developmental assessments.

141. As DCS does not adequately assess children entering its care, it is not surprising that the 1998 C-PORT Report stated that “the majority of Plans of Care/Permanency Plans were inadequate.” The case plans reviewed failed to address child or family needs, were out of date, contained inappropriate goals, were not individualized, and at least 10% of the cases had no plan to address the needs of both the child and the family.

142. DCS’s failure to provide assessments and case plans frequently results in children lingering in temporary placements (e.g., shelters, diagnostic placements). Until their case plans are completed, children remain in these placements, where they receive neither treatment nor services. Data for 1998 provided by DCS to the Office of the State Comptroller showed that almost 40% of children in temporary placements had been there beyond 30 days. Several regional resource managers interviewed for the Comptroller's Report attributed these extended stays to delays in providing initial assessments, which are required before children can be moved to longer-term placements.

143. The 1998 C-PORT Report also found that problems with assessments are attributable to the lack of training of case managers in developing a social history and in recognizing the need for additional assessments. High caseloads and the high turnover rate and vacancy rate for DCS staff are further barriers to timely, adequate assessments.

144. DCS's failure to identify appropriate services in assessments and case plans, in

violation of law and reasonable, professional standards, has often resulted in the denial of appropriate treatment and intervention along with increased stays in custody.

B. Permanency Planning for Children

145. Once a child is removed from his or her home and placed in DCS custody, DCS must initiate permanency planning. Permanency planning is the component of the case plan (the “permanency plan” or “plan of care”) mandated for each child, that identifies the child’s long term goal. It also encompasses the process of working towards this goal, and monitoring a child’s needs, development and progress towards placement in a permanent home, and modifying the goal as necessary. If DCS decides a child should not be returned home, it must promptly determine how best to secure an alternative permanent home for the child. The home county case manager is responsible for developing the permanency plan for each child in DCS custody.

146. Permanency planning in Tennessee is routinely inadequate and in violation of federally mandated timetables and reasonable professional standards. The 1998 C-PORT Report determined that the majority of the permanency plans for the cases reviewed were inadequate.

147. Long after it is clear that a child cannot or should not be returned home, DCS still fails to set a goal of adoption, despite federally mandated timetables designed to enhance permanency planning. Children routinely remain in DCS custody for more than two or three years, or more, before adoption is even considered and their goal is finally changed.

148. While waiting for their goals to be changed, thousands of children in DCS custody grow too old to be strong candidates for adoption, and too often lose much of their childhood in foster care. As concluded in the 1998 C-PORT Report, “children are remaining in custody too long due to delays: in release from custody, in termination of parental rights, and in the adoption

process.” In fact, the number of cases in the annual C-PORT studies where children were found to be in custody too long — a full 29% of all children in DCS custody in 1998 — has progressively increased over the past five years.

C. Out-of-Home Placements

149. A severe, ongoing lack of sufficient and appropriate foster care placements in Tennessee has resulted in unlawful, dangerous and harmful conditions for children in DCS custody. According to the 1998 C-PORT Report, DCS foster children experience an average of 3.4 placements, and 23% — over 2,000 children — experience 10 or more placements. While their needs go unmet, and their emotional and developmental well-being is damaged by multiple inappropriate placements, children routinely face additional deprivations — including further abuse and neglect — while in foster care, and the time they spend in custody is unnecessarily and unlawfully prolonged. As found in the 1998 C-PORT Report, over 36% of foster children spent more than two years in foster care, and over 17% spent four years or more in foster care. The actual percentage of *foster* children in DCS custody for over two and four years is significantly higher, because the state’s estimate includes delinquent children who, as found by the state, spend less time in custody. Many children have spent all or most of their childhoods in state foster care custody.

150. There is a fundamental lack of sufficient numbers and types of placements necessary to meet the needs of foster children in Tennessee. According to the Comptroller’s Report, in a survey conducted by TCCY in late 1998, 73% of juvenile court judges reported that a lack of placements usually, if not always, prevents the securing of an appropriate placement that meets the child’s needs. As found in the Comptroller’s Report, field staff place children in “any available ‘slot’” and judges expressed concern over “DCS workers ‘giv[ing] kids what is available and not

necessarily what they need.’”

151. Children are routinely placed in emergency placements such as shelters for up to four or six months at a time and sometimes up to 12 or 14 months, while they remain on “waiting lists” for needed placements and services. Compounding this problem, as found in the Comptroller’s Report, across the state DCS “lack[s] enough shelter beds.” Other emergency placements — including diagnostic and evaluation centers, observation and assessment centers, temporary holding facilities, mental health facilities and emergency foster homes — are also routinely stretched beyond their capacity. With no available placements, children taken into DCS custody are often held in state offices during the day in the hopes that an emergency slot will open up. In at least one office used by DCS workers, children have slept overnight on cots while they await an initial, or another emergency placement.

152. According to the Comptroller’s Report, as of April of 1999, almost 400 children were on waiting lists for needed placements and services (excluding the significant foster care population in Davidson and Hamilton counties, neither of which responded to the Office of Research’s requests for updated information), and at one point between September of 1998 and March of 1999, almost 500 children had been in emergency placements for more than 30 days. In addition to experiencing what the Comptroller’s Report refers to as “dead time” while they await placement, these children face significant deprivations. As concluded in the Comptroller’s Report, “[d]angerous children with a history of violence are placed with non-dangerous children in temporary placements, putting previously victimized children at further risk.” Moreover, “a child who has been sexually abused may be put in the same temporary placement as a juvenile delinquent charged with sexual assault” which, as one judge was quoted as saying in the Comptroller’s Report, is “like mixing predators

with prey.”

153. Conditions in out-of-home placements routinely do not improve for children who get beyond an emergency placement. According to the 1998 C-PORT Report, a significant number of children had been sexually or physically abused in their placements. There is a grave shortage of therapeutic and more restrictive foster placements (particularly Levels II and III), and children are often placed within lower levels of care than they require, endangering their own safety and development and placing other foster children in the home or facility at risk of harm. Case managers routinely fail to visit children in foster care placements as required by law, which hampers appropriate planning, allows their deterioration to go unnoticed and untreated, and allows threats to their safety to remain undetected.

154. Overworked and overburdened case managers often do not take required steps to ensure that children in foster care are safe. Since at least 1992, state reports have documented the failure of DCS case managers to make the required monthly face-to-face contact with children in foster care. Routinely, case managers fail to visit children and foster homes for which they are responsible for months and even years at a time. Without this contact it is very difficult for case managers to accurately assess the child's safety, situation and needs. A 1998 performance audit of case files found little evidence of contact between case managers and those they are supposed to serve.

155. Additionally, DCS routinely fails to adequately investigate the appropriateness of foster homes and foster parents before placing children with them, and fails to adequately monitor and investigate the safety and care provided in foster homes. DCS often places children with relatives without adequately investigating the appropriateness of the home or the relatives' ability to care for

the children, and fails to adequately monitor children once they are placed with relatives. The results of these failings can be severe: children are abused and neglected while in foster homes or with relatives, and their needs go unmet.

156. Residential placements often fail to provide adequate training and supervision to ensure the safety of and an absence of violence for children placed in such facilities. As a result, children are often harmed by other children or by staff. Moreover, incidents are often unreported or inadequately reported, so corrective action is not possible.

157. There are an alarming number of teenage foster children in Tennessee. According to the 1998 C-PORT Report, approximately 45% of all foster children — over 4,000 children — are age 13 and older. As found in the Comptroller's Report, these children experience the greatest number of multiple placements, and face the most difficult prospects for adoption and permanency. Additionally, teenagers in DCS custody, who are predominantly placed in group homes or other congregate settings, too often face physical and sexual abuse while in custody. Most runaway children — 450 children according to the 1998 C-PORT Report — flee group homes; upon information and belief, most of these children are teenagers.

158. DCS often fails to provide children who have disabilities — physical, mental, emotional or otherwise — with the least restrictive placement necessary to meet their special needs. Additionally, DCS often fails to provide required supports and services for these children that are necessary to allow them to participate fully in the child welfare system. Too many disabled children in DCS custody are deprived of the opportunity to achieve their potential.

159. DCS has failed to recruit and retain a sufficient number of adequate foster families. DCS routinely fails to provide adequate training to foster parents, especially regarding how to

handle children with very serious behavioral and emotional problems, and DCS often inappropriately places children who require a higher level of care than the foster parents can provide. Defendants also routinely fail to provide on-going support services for foster parents, many of whom go long periods — many months or up to a year or more — without ever seeing or hearing from a case manager. Requests by foster parents for assistance routinely go ignored or unaddressed. As a result, foster parents routinely suffer “burn out” and withdraw from the system.

160. In addition to poor pre-placement and on-going support, inadequate compensation impedes both the recruitment and retention of foster families in Tennessee. The rates paid to foster parents to house, clothe and feed the children in their care are significantly below U.S. Department of Agriculture (USDA) figures concerning the cost of caring for a child in Tennessee with the result that children in state custody have less money available for basic necessities, like food and clothing, than the federal government has determined is necessary.

D. Services to Children in Foster Care

161. DCS fails to provide children with legally required services while in foster care, including providing access to education, services to enable children to return home or to have visits with siblings and other family members while in DCS custody, services to be freed for adoption and placed in permanent homes, and services to live independently once they are discharged from Defendants' custody at age eighteen.

Educational services

162. The education available to children in DCS custody is routinely inadequate. DCS, directly and through the contract agencies, is legally required to ensure that all children in foster care receive access to an appropriate education that meets their individual needs and to provide all

children in foster care with access to appropriate educational and vocational services. DCS is failing to meet these obligations.

163. Children in DCS custody routinely experience multiple placements, so they are perpetually changing schools, often causing them to repeat grades. Behavior and emotional problems suffered by children in DCS custody frequently impede educational development, and DCS fails to provide the therapeutic and educational services to address these needs so that children can benefit from the education that is offered. DCS often fails to even notify local educational authorities of the presence of a child in its custody for placement in a local school district.

164. Children in emergency placements, such as shelters, frequently receive inadequate schooling in single “classrooms” with one or two teachers overseeing large numbers of children, despite wide variations in age, educational development and ability among the children. In some group homes, “school” involves little more than three hours in the morning and afternoon doing crossword puzzles, with a lunch recess in between. “Teachers” are too often little more than baby-sitters.

165. The educational needs of children with disabilities are even more likely to go unmet by Defendants. These children are legally entitled to access to special education services, but frequently do not receive them. DCS fails to identify many children in its custody who are in need of special education services, and fails to take any action to ensure that children who have been identified receive access to appropriate educational services.

Reunification, visitation and family support services

166. DCS too often fails to take reasonable steps to evaluate whether reunification with the family is an appropriate goal, and foster children and their birth parents are not provided with

services necessary to facilitate the prompt reunification of their families whenever safe and appropriate, as required by law and reasonable professional standards. Additionally, Defendants routinely fail to provide child-sibling visits and other family support services for children in DCS custody, which are also required by law and reasonable professional standards.

167. DCS often fails to provide psychological evaluations and counseling to parents in order to facilitate a safe reunification. DCS and the courts frequently require parents to undergo evaluations and subsequent counseling before a child can be returned home. Although DCS is obligated to provide evaluations and counseling in such circumstances, DCS refuses to provide them from its own resources and relies exclusively on funding from TennCare. However, TennCare frequently refuses to pay for parental evaluations and counseling, on the grounds that they are not medically necessary. This leaves children trapped within DCS's deficiencies and stranded in foster care for unnecessarily long periods, as they cannot be returned home until the parents are evaluated and receive counseling, while their parents do not have the independent means to pay for these services themselves.

168. Additionally, because DCS does not appropriately include parents in planning for their children's permanent discharge from foster care, parents frequently do not know or understand what they must do to secure their children's return, prolonging children's stays in foster care and hindering reunification.

169. Another systemic problem, which creates a further barrier to reunification, is the lack of visitation between parents and children with a goal of return home. Children are often placed at great distance from their parents and siblings. As found in the Comptroller's Report, children are routinely placed out of their county and 35% are placed out of their region, "making it more difficult

for the home county case manager to stay in touch with the child, and for parents to participate in visitation, counseling and reunification efforts” and “undermin[ing] treatment efforts and outcomes.”

170. In cases where parents do not have cars or access to them to facilitate visitation and reunification, DCS case managers are responsible for providing transportation. However, transportation services are frequently inadequate and visits often do not take place. The lack of transportation in rural counties is particularly severe and has an impact on not only visitation, but on other reunification services as well, because the closest service providers are frequently located across county lines.

171. Reunifications are too often attempted without appropriate services or supervision, and children suffer additional abuse and neglect and must again be removed from their parents’ home.

172. Additionally, DCS often fails to provide children in DCS custody with visits with their siblings or other family members, as appropriate and required by law and reasonable professional standards. Inadequate resources, overburdened case managers, the placement of children out of region and inappropriate planning combine to deprive children of important family ties.

Adoption and other permanent placement services

173. Once DCS determines that a child’s return home is not safe and in the child’s best interests, DCS is required to promptly determine how best to secure a permanent home, which is usually accomplished through adoption. However, numerous systemic deficiencies in the adoption process prevent or delay children from being adopted, and unnecessarily and unlawfully extend children’s time in state foster care custody.

174. DCS fails to timely change children’s permanency plans to include a goal of adoption.

For example, one “Illustrative Case” in the 1998 C-PORT Report by TCCY revealed a plan of care that “had not been updated to address . . . the current goal of adoption;” in another case where “adoption was the stated goal of the Plan of Care but no one was working toward this goal and the child wanted a family,” TCCY found that “[p]lans for adoption should have been implemented years ago.” These severe problems are routine.

175. Federal law requires DCS to file a petition to terminate parental rights, absent certain exceptions, for children who have been in foster care for 15 of the most recent 22 months. In September 1998, DCS reported to the Legislature that more than 6,000 children could fall within this category. Of these children, the Comptroller’s Report includes the state’s estimate that DCS should have — but has not — filed a petition to terminate parental rights for at least 1,100 children for whom reunification efforts have failed. In too many cases Defendants are failing to comply with federally mandated timetables. Termination is routinely not pursued in a timely manner, due to case manager overload, turnover, inexperience, and insufficient legal staff to process terminations.

176. The process does not improve for those children for whom parental rights have been terminated. Although most adoptions are by foster parents who are well-known to DCS, too often DCS fails to complete the work necessary to complete the adoption. Unreasonable and unlawful delays during the process prevent concrete steps toward finalization from even beginning. Once a child has been freed for adoption, her case is supposed to be transferred to an adoption unit (or the equivalent), however, six months to a year routinely pass before case files are physically transferred. During this time, children do not receive the mandatory case visits, because they are the responsibility of neither their old or new caseworkers. Even once the case transfer has occurred, another year, and too often many years, pass before any concrete efforts towards adoption are taken.

177. DCS has failed to develop a sufficient adoptive home recruitment program so foster children for whom adoption is necessary have a chance to be placed in a permanent family. According to the Comptroller's Report, with over 800 children in DCS custody awaiting adoption, "the critical need for adoptive parents statewide exists." Despite a surge in demand for adoptive parents, as reported in the Comptroller's Report, total adoptive placements in fiscal year 1998 decreased from fiscal year 1997. The shortage of adoptive homes will only intensify as DCS currently rushes to file termination petitions for over 800 children in a desperate attempt to diminish its gross non-compliance with federal mandates.

178. Despite this ever growing need for adoptive parents, the system for adoption services has become so overloaded that the statewide "list" for prospective adoptive parents has been closed to new parents who would like to adopt.

179. In addition, because of the state's failure to seek and secure appropriate adoptive homes for children needing permanent families, foster parents who cannot provide an appropriate permanent family for a child are sometimes asked to become adoptive parents and are approved for adoption by DCS solely because it has no other options. In other instances, because DCS does not act within a reasonable period of time to make and implement the decision about whether children should be adopted, children form serious emotional attachments to foster parents who are not appropriate adoptive parents, or who are unwilling to adopt, creating situations in which children must be wrenched out of long-term relationships or left to grow up in the impermanence of state foster care custody.

180. Turnover and excessively high case loads for adoption unit workers make timely efforts to proceed towards adoption virtually impossible. Vacancies are not being filled, and case

loads are routinely being “absorbed” by existing, already overburdened staff that cannot possibly provide required services. Training is inadequate, and persistently high turnover has resulted in largely inexperienced adoption workers.

181. Additional systemic deficiencies in the process after parents’ rights have been terminated further delay adoptions, often up to several years. For example, a single state employee who staffs the “Putative Father Registry” in Nashville for the entire state must search the state’s records for each child prior to any adoption, which often results in significant delays. In another example, pervasive problems in the finger printing process — also required prior to adoption finalization — frequently adds inordinate delays. In yet another example, DCS frequently fails to ensure, within a reasonable period, that the required, updated home study of the adoptive parents is conducted.

Independent Living services

182. Teenagers make up approximately 45% of foster children in Tennessee. Foster children age 16 and older who cannot return home or be adopted are legally entitled to services designed to prepare them to live on their own upon their discharge from the foster care system at age eighteen. Children under the care of DCS, however, receive inadequate or no preparation for independent living, although DCS is aware that the coping and survival skills of many older foster children are seriously deficient and that they are not prepared to live on their own when they are discharged from state custody.

183. Most areas of the state have no programs specifically for independent living training, and those few programs which do exist have few openings. DCS considers that a child is receiving independent living training if the child simply is attending high school. Young people are regularly

discharged from the foster care system lacking the education, training and life skills necessary to live independently.

184. The hundreds of “runaway” teens are even more likely to fail at supporting themselves. DCS does not make any effort to locate these teens; instead these children are abandoned to unknown fates. Many of them end up in the criminal justice system, or in lives of poverty and dependency as adults.

185. Pregnant children in foster care often fail to receive maternity services to help them prepare to become adequate parents when their child is born, leaving them grossly unprepared when they give birth and when they are discharged from state custody. DCS lacks sufficient placements for new mothers and their children. Too often, children born of foster children while in DCS custody remain in foster care after the mother is discharged from custody.

186. Additionally, foster children with disabilities, including serious mental health or other behavioral problems, are in particular danger when they “age out” of the system. DCS has established no process for ensuring that these children in state custody will be provided with necessary and essential treatment and supportive services in adulthood, or for arranging any transition process.

E. Administrative and Judicial Reviews

187. Defendants are legally required to provide children in DCS custody with administrative or judicial reviews of their status at least every six months, a minimum of an annual judicial review of the child’s foster care plan, and no later than 18 months after the original placement a special court review to determine the permanent plan for the child. These reviews and hearings are to ensure that foster children's cases are periodically overseen by a disinterested person and that the

children's progress toward achieving permanency is monitored so that children remain in foster care for as short a period as possible. However, hearings and reviews routinely do not proceed in the time and in the manner required by law.

188. DCS routinely fails to notify birth parents, foster parents or Court Appointed Special Advocate (CASA) volunteers, of scheduled administrative and judicial reviews. Due to inadequate legal staffing, which often makes it impossible for DCS attorneys to appear at hearings, and inadequate case manager resources, which results in out-of-date and incomplete case files, DCS often postpones judicial hearings for weeks and even months at a time.

F. Case Manager Case Loads, Turnover, Training and Supervision

189. The Comptroller's Report concluded that “[h]igh staff turnover and case loads, inadequately trained staff, and under-staffing continue to impede” the provision of needed services to children in the child welfare system.

190. Individual caseloads of over 40 children, well above reasonable professional standards, are not unusual. In information provided to the State Comptroller in 1999, DCS has admitted to case loads as high as 51 cases per case manager. Case loads have risen in at least one region to as high as 80, when vacancies in case manager positions are taken into account.

191. For the last several years, the turnover among case managers has been, and continues to be, unrelenting. According to DCS's own 1998 data, 17% of case-carrying worker positions were vacant. In one DCS office alone, the turnover rate in one year was one hundred percent. The so-called “vacant case loads” caused by high turnover are at best “absorbed” in name only by other already over-extended staff. Many children have more than three different newly-assigned case managers during a single year in foster care as the result of resignations or reassignments.

192. The front-line staff are increasingly young and inexperienced. In September of 1998, DCS reported that 23% of caseworkers had less than one year's experience.

193. Training is inadequate. New workers are trained only for approximately three weeks, which is insufficient, according to the Comptroller's Report and reasonable professional standards. In-service training is also deficient, and workers are unable to take advantage of the little training that does exist due to the demands of high caseloads. A report in September 1998 in connection with the EPSDT Consent Decree determined that additional training is required to prepare case managers to adequately assess a child's and family's needs and to develop a treatment plan for the child. The Executive Director of TCCY, in presenting the 1998 C-PORT data to a legislative committee, stated that the poor results illustrated a serious need for more and better training on assessment, permanency planning, and clarification of the roles of the various overlapping case managers.

194. The qualifications required for case managers at DCS are inadequate. Applicants for DCS case manager positions are required to have only a bachelor's degree in any subject and are not properly assessed by educational background or experience for the position.

195. In addition, case manager supervisors often lack experience and/or training in child welfare, and therefore cannot adequately supervise the case managers. They also supervise too many case managers and too many programs, and due to the turnover, they are increasingly supervising new case managers who lack any practical experience. Overload also prevents supervisors from performing their jobs adequately. Case manager supervision often consists solely of checking written records in order to determine if the case manager has filled out the proper paperwork.

196. DCS management responds with at best indifference, if not hostility, to case managers or supervisors who have complaints or express concerns about DCS policy, casework and personnel issues. Additionally, fear of retaliation by DCS often deters foster parents, pre-adoptive parents and others who provide services to children in DCS custody from advocating for the needs of individual children or complaining when needed services are not provided.

197. As a result of these converging problems, case managers are unable to provide professional child welfare services for the children entitled to receive them. Case managers do not have time to visit children in their foster homes or to procure services necessary to support the children's behavioral and emotional needs. Moreover, many of these critical services are simply unavailable, which further impedes case managers' ability to function effectively. The role confusion between the home county case managers and residential case managers, and the resulting service failures, are so severe that TCCY has recommended abolishing the dual case manager system and replacing it with a single case manager.

198. The systemic problems at the case manager level also contribute to paralyzing deficiencies elsewhere in the DCS system. For example, in order for a DCS attorney to initiate a proceeding to terminate parental rights, the case file must first be reviewed and summarized by the caseworker before being sent to a DCS attorney. Overworked case managers cannot provide these summaries in a timely manner (if they are provided at all), and inexperience, inadequate training and supervision render most ill-equipped to prepare a useful summary (e.g., interpreting DHS log entries, assessing evidence of neglect or abandonment). Desperately needed and legally required services often grind to a virtual halt.

G. Management Information System

199. Federal law requires every state to maintain a computer database to track individual children in foster care and to coordinate children and available placements and services that meet their needs. The computer system must also be able to generate reports so that the agency can analyze the child welfare system as a whole. DCS lacks an adequate management information system ("MIS") to provide accurate data on children in DCS custody. According to the Comptroller's Report, this lack of data "impedes efficient and effective treatment for children in DCS custody."

200. The lack of adequate information about children in state custody, and the desperate need for an improved MIS, have been problems in the delivery of services to children in Tennessee since the early 1980's, and are well-known to DCS and its predecessor agency.

201. DCS currently utilizes the Client Operation and Review System ("CORS") to track the profiles of children in state custody, including their placement history, family information, and permanency plan. Among its many proposed functions, CORS is supposed to match children with facilities providing care, monitor the status of children and identify those who need to be reassigned to other facilities. However, as stated in the Comptroller's June 1999 Financial Audit ("1999 Financial Audit"), four separate reports between 1994 and 1998 found that CORS has major problems in ensuring basic data integrity and user accountability.

202. DCS is currently unable to provide basic critical information on the functioning of the system it is charged with operating, including: the actual location of each child in foster care and their prior placements; the case plan and permanency goal for each child; and the number of children in custody who are on waiting lists for services and the type of placements or services they require.

203. According to the 1999 Financial Audit, even if the system operated as it was intended, "CORS does not maintain sufficient information for proper foster care semiannual reporting, as required by the federal Department of Health and Human Services as of March 1998." Rather than gather the necessary foster care data required, DCS has chosen to take a penalty each time the report is submitted, resulting in penalties from March 1998 and September 1998 alone totaling approximately \$165,370.

204. DCS Management has stated that many of the problems with the CORS system will be remedied when it is replaced by a new database called "TnKids." TnKids, like so many other actions taken over the years in response to obvious problems, shows little promise of actual implementation, let alone solving the fundamental deficiencies in the CORS system.

205. While the new system is purportedly designed to provide better data management than CORS, it will not provide a meaningful improvement over the current system. Assuming TnKids is eventually running, the old data now in CORS will be transferred in its entirety to the new system, along with all of the data problems which exist in the current system.

H. Financial Management

206. Financial mismanagement in the administration of child welfare services has occurred while funding for child welfare services has decreased over the past five years. Repeated and ongoing financial mismanagement has led to the loss of millions of dollars available for child welfare services in Tennessee — documented by DCS's own internal audits — that are unaccounted-for, squandered, or simply unused (in the case of available federal monies). According to the Tennessee Budget Project, funding for children committed to the state's custody was approximately \$167.5 million in 1999, approximately \$82 million less than the state's spending of

\$250 million in 1994.

207. The financial mismanagement at DCS has been, and continues to be, so severe that the 1999 Financial Audit concluded:

Based on the number of repeated findings and the increase in new findings, it appears that the Commissioner [defendant Hattaway] . . . and others have not recognized the seriousness of all the findings.

This mismanagement has diverted millions of dollars away from providing desperately needed child welfare services to the Plaintiff children.

208. Adding to the mismanagement of funds, Defendants have failed to utilize huge sums of otherwise available monies for children in DCS custody. Under Title IV-E of the Social Security Act, states are entitled to receive federal funding towards the board rate for children in foster care whose parents live below the poverty line. Defendants do not claim the Title IV-E funding for which Tennessee is entitled. At least 65% of Tennessee families with children in foster care have incomes below the poverty line, yet Tennessee seeks Title IV-E funding for only approximately 25% of the children in foster care.

I. Discriminatory Effect in the Administration of Child Welfare Services on African-American Foster Children in DCS Custody

209. Defendants utilize criteria or methods of administering child welfare services which have the effect of subjecting children in the African-American Subclass to discrimination on the basis of race, color or national origin, and the effect of defeating or substantially impairing the accomplishment of the objectives of the child welfare services provided by Defendants to foster children, with respect to the children in the African-American Subclass.

210. Defendants make even less effort to secure appropriate placements and services, and

to make reasonable efforts to secure a permanent home for African-American children in state custody, than they do for Caucasian children.

211. Children in the African-American Subclass receive even fewer and poorer quality child welfare services than Caucasian children. As found in the Comptroller's Report, "[a]nalysis of 1997 C-PORT data indicates that upon entering custody, African-American children are not as likely to receive adequate services crucial to achieving permanency and improving family participation." The Comptroller's Report found, on at least four specific measures of service adequacy, "a discrepancy in the way the DCS system facilitates the participation of minority children in decision-making compared to the system's efforts toward white children and families" and that "the DCS system is not as accomplished at facilitating progress or overall adequacy with minority children."

212. The specific measures of inadequacy supporting these findings of discriminatory effect in the Comptroller's Report included: inadequate child participation (nine percent for African-American/Biracial children versus four percent for Caucasian children); inadequate family participation (20% versus 12%, respectively); inadequate family progress (37% versus 30%, respectively); and overall service inadequacy (52% versus 43%, respectively). On these factors, the Comptroller's Report concluded:

The difference in inadequacy between minority and Caucasian children on these four measures is statistically significant. This indicates that it is unlikely that differences between minority and Caucasian children are based on chance and that race is a factor in whether or not children receive adequate services. This does not mean that race is the cause [emphasis in original], but there is enough statistical difference in these four areas to suggest it is a factor and that more study is needed.

(Emphasis added).

213. African-American children also spend a disproportionately longer time in foster care than Caucasian children. The Comptroller's Report states that "Tennessee officials indicate that finding permanency through foster and adoptive homes for African-American children is more difficult than for other groups" and that "[t]his may result in longer custody stays for African-Americans." For example, according to DCS statistics, while the percentage of all foster children statewide who had been in custody for four years or longer was 17%, the percentage of such children was 29% in Shelby County where African-American children comprised over 88% of all foster children.

214. Defendants' criteria or methods of administering adoption and permanency services also have a discriminatory effect on African-American foster children. According to the Comptroller's Report, in 1997-1998 DCS placed 104 African-American children in adoptive homes or 29.5% of all children placed in adoptive homes, yet 41% of all foster children for that year were African-American. In contrast, 220 Caucasian children were placed for adoption, comprising 70.5% of the total number of adoptions, while 52% of all foster children were Caucasian. While DCS does not publicly provide a breakdown by race of the estimated 800 children in 1998 for whom parental rights had been terminated and were awaiting adoption, the Comptroller's Report states that "many . . . are African-American."

CAUSES OF ACTION

First Cause of Action: Substantive Due Process

215. The foregoing actions and inactions of the Defendants are inconsistent with the exercise of reasonable professional judgment and also amount to a pattern, practice and custom of deliberate indifference to the constitutional rights of children in the Class. As a result, children in

the Class are being deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment of the United States Constitution. These rights include, but are not limited to: the right to protection from harm; the right not to be harmed while in state custody; the right not to be deprived of their liberty unnecessarily by retention in state custody; the right to be placed in the least restrictive, most appropriate, family-like setting while in state custody; the right to treatment consistent with the purpose of the state's assumption of custody; the right to receive care, treatment and services consistent with accepted, reasonable professional judgment; and the right to protection from state-created dangers, including children's right not to be removed from their homes, committed to state custody, and subsequently placed out of custody and into circumstances, which are known or should be known to Defendants, and which render children vulnerable to danger and place them at risk of harm.

Second Cause of Action: Procedural Due Process

216. The foregoing actions and inactions of the Defendants are inconsistent with the exercise of reasonable professional judgment and also amount to a pattern, practice and custom of deliberate indifference to the constitutional procedural due process rights of children in the Class. As a result, children in the Class are being deprived of federal-created and state-created liberty or property rights without due process of law. The federal-law entitlements to which children have a constitutionally protected interest arise from the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 620-27, 670-679a, and regulations promulgated thereunder; the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 *et seq.*; the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. §§ 794, 794a; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* and its implementing regulations,

42 C.F.R. § 80.3 et seq. (as to the African-American Subclass only). The state law entitlements to which Plaintiff children have a protected interest under the United States Constitution include, but are not limited to, rights that require Defendants to take steps necessary to: provide family reunification services in order to facilitate the reunification of the child safely and appropriately within a timely fashion, to each family with a child in foster care, as provided by statute; ensure, in the circumstances provided by statute, that whenever a child is removed from such child's home and placed in DCS custody, that DCS seeks to place the child safely with a fit and willing relative; prohibit, in the circumstances provided by statute, the return of a child found to be dependent and neglected as a result of brutality or abuse, or as a result of severe abuse, to the custody or residence of any person who engaged in or knowingly failed to protect the child from the abuse; prepare a foster care plan/permanency plan for each child in care within 30 days of the date of foster care placement, with all required elements, and modify and monitor the plan as necessary, as required by statute and regulations; ensure, as provided by statute, that a report is prepared and submitted for each child in foster care on the progress made in achieving the goals set out in the plan, and that administrative or judicial reviews of each child's plan and the progress reports are conducted within 90 days of the date of foster care placement, and no less frequently than every six months thereafter, for so long as the child remains in foster care; ensure, as required by statute, that a permanency hearing is held within 12 months of the date of foster care placement for each child in foster care, and ensure subsequent permanency hearings are held no less frequently than every 12 months or as otherwise required, for as long as a child remains in foster care; prohibit the placement in temporary shelters of certain types of delinquent or alleged delinquent children with children adjudicated dependent and neglected, as provided by statute; restrict to 30 days the time children may spend in

temporary placements without needed services, as provided by statute; arrange, in the circumstances provided by regulation, for appropriate visitation for sibling groups or other extended family members; provide for each child access to an appropriate education as required by the Tennessee Department of Education, statute and regulations; to assure appropriate placement for children with disabilities, DCS must provide access to appropriate educational services required by the state board of education; license, inspect, staff and supervise all placements as required by statute and regulations, and ensure each home is equipped and staffed to properly provide for the physical, social, moral, mental, educational or religious needs of all children kept therein; ensure that no greater number of children are kept at any one time on the licensed premises than is authorized by the license, and that no child is kept in a building or place not authorized by the license; restrict the capacity of emergency shelters as provided by regulations; provide maternity services, in the circumstances provided by regulations, for each child in foster care; and, in the case of a child who has reached 16 years of age, determine and provide, in the circumstances provided by statute and regulations, the services needed to assist the child to make the transition from foster care to independent living.

Third Cause of Action: First and Ninth Amendments

217. The foregoing actions and inactions of the Defendants are inconsistent with the exercise of reasonable professional judgment and amount to a pattern, practice and custom of deliberate indifference to the constitutional rights of children in the Class. As a result, children in the Class are being deprived of their right conferred to them by the First and Ninth Amendments to the United States Constitution not to be deprived of a family relationship absent compelling reasons.

Fourth Cause of Action: The Adoption Assistance Act

218. As a result of the foregoing actions and inactions of the Defendants, children in the Class are being deprived of the rights conferred upon them by the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption Assistance and Safe Families Act of 1997, and regulations promulgated thereunder. These rights include, but are not limited to, the right to timely written case plans containing mandated elements, and to the implementation and review of these plans; the right to placement in foster homes or other settings that conform to reasonable professional standards; the right to placement in the least restrictive, most family-like setting; the right to appropriate and proper care while in custody; the right to be freed for adoption in accordance with the time frames established by law; the right to planning and services to obtain a permanent placement at the earliest possible time, including documentation of the steps taken to secure permanency; the right to regular judicial and administrative reviews of their foster care placements; the right to dispositional hearings within 12 months of entering custody and periodically thereafter; the right to independent living services; and the right to receive services in a child welfare system with an information system adequate to permit the state to make fully informed decisions in each child's best interests.

Fifth Cause of Action: Federal Common Law

219. As a result of the foregoing actions and inactions of the Defendants, the children in the Class, as third party beneficiaries to the Tennessee "State Plan" contract pursuant to the Adoption Assistance Act, which also incorporates and includes provisions of state law, entered into between Defendants and the federal government, are being denied their rights under federal common law to the services and benefits that Tennessee is contractually obligated to provide to them under the

Tennessee "State Plan."

**Sixth Cause of Action: Americans with Disabilities Act and the
Rehabilitation Act of 1973**

220. As a result of the foregoing actions and inactions of the Defendants, children in the Class who are disabled by their physical or emotional conditions are being deprived of the rights conferred upon them by the federal Americans with Disabilities Act and the federal Rehabilitation Act of 1973. These rights include but are not limited to the right to participate fully and receive the benefits of the state child welfare and foster care programs; to be placed in the least restrictive placement; and to receive any and all services necessary for them to participate fully in the state foster care program despite their handicaps or disabilities.

Seventh Cause of Action on Behalf of the African-American Subclass Only: Title VI

221. As a result of the foregoing actions and inactions of the Defendants, children in the African-American Subclass are being deprived of the rights conferred upon them by Title VI of the Civil Rights Act of 1964 and regulations issued by the United States Department of Health and Human Services pursuant to Title VI. These rights include but are not limited to the right not to be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance; and the right not to have any state program or activity which receives federal financial assistance utilize criteria or methods of administration which have the effect of subjecting any person to discrimination on the ground of their race, color, or national origin, or which have the effect of defeating or substantially impairing the accomplishment of the objectives of the programs with respect to individuals of a particular race, color, or national origin.

PRAYER FOR RELIEF

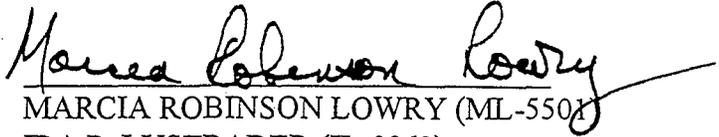
WHEREFORE, the Plaintiff children respectfully request that this Honorable Court:

- A. Assert jurisdiction over this action;
- B. Order that Plaintiffs may maintain this action as a class action pursuant to Rule 23 (b)(2) of the Federal Rules of Civil Procedure;
- C. Declare unconstitutional and unlawful pursuant to Rule 57 of the Federal Rules of Civil Procedure Defendants' failure to provide for Plaintiffs' safety and freedom from harm, consistent with the exercise of reasonable professional judgment, and failure to comply with the federal Adoption Assistance Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964 and its implementing regulations (as to the African-American Subclass only), and Plaintiffs' rights under federal common law as third party beneficiaries to Tennessee's "State Plan" contract pursuant to the Adoption Assistance Act with the federal government;
- D. Permanently enjoin Defendants from subjecting members of the Plaintiff Class and African-American Subclass to practices that violate their rights;
- E. Order appropriate remedial relief to ensure Defendants' future compliance with their legal obligations to Plaintiffs;
- F. Award to the Plaintiffs the reasonable costs and expenses incurred in the prosecution of this action, including but not limited to reasonable fees and costs pursuant to 42 U.S.C. §§ 1988 and 1920; and
- G. Grant such other and further equitable relief as the court deems just, necessary and proper to protect the Plaintiff Class members from further harm by Defendants.

DATED: May 10, 2000
Nashville, TN

Respectfully submitted,

By:



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