

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)

L.J., et al., \*  
Plaintiffs, \*  
v. \* Civil Action No. JFM-84-4409  
THEODORE DALLAS, et al., \*  
Defendants. \*

\* \* \* \* \*

**PLAINTIFFS' RESPONSE TO DEFENDANTS'  
44th AND 45th SIX-MONTH COMPLIANCE REPORTS**

Plaintiffs L.J., et al., by their undersigned counsel, respectfully submit the following Response to Defendants' 44th and 45th Six-Month Compliance Reports.

**DISCUSSION**

Under the Modified Consent Decree ("MCD") approved by this Court in October 2009, Plaintiffs need not file responses to Defendants' compliance reports and instead may use the problem-solving or dispute resolution processes to raise and preserve objections and concerns regarding compliance. Since the MCD has been entered, Plaintiffs have done so. Nevertheless, in light of the recent change with regard to the Independent Verification Agent ("IVA") under the MCD and the fact 2½ years have transpired since the decree was signed, Plaintiffs submit this short Response addressing problems pertaining to reports of the prior IVA and the status of compliance on key requirements.

1. IVA Report. The prior Independent Verification Agent's reports certification reports assessing the validity, accuracy, and reliability of Defendants' 44th and 45th Six-Month

Compliance Reports have numerous problems that make it difficult to assess information presented in Defendants' reports.

First, the IVA does not adequately address deficiencies in the criteria that Defendants use to measure compliance. In many instances, performance data in Defendants' reports do not fully measure compliance and instead apply criteria or measurements that are more narrowly defined than the MCD's requirements. Plaintiffs' critique of the criteria (which was provided to Defendants and the IVA earlier last year) is attached. (Att. A, Pls. Rep. to Defs. Regarding Defs.' Compl. Measures and Criteria). As these demonstrate, the compliance data do not match up with the MCD requirements. The IVA's response to the 44th report did not address these problems. Thus, where the IVA provisionally certified certain health measures (e.g., completed health passports being promptly given to caregivers), he did not consider problems with Defendants' measures and criteria for compliance. For instance, BCDSS determines compliance with the health passport requirement by determining whether a passport was given when the child was placed with the caregiver, which occurs *before* medical information about the child is gathered; the passport therefore may be blank, but that would be deemed compliant so long as it is physically handed to the caregiver.

Second, the IVA's report did not conduct the level of verification needed to determine whether actual compliance occurred. For instance, to validate compliance data for the health passport requirement, the IVA merely looked at Defendants' computer database ("MD. CHESSIE") for vaccination records to certify "provisional" compliance. The IVA did not determine what information was provided to the caregivers, and when – the actual test for compliance – even though the MCD requires passports to contain much more information that

vaccination records. Indeed, in the 45th Report, the IVA determined that key health information was not in MD. CHESSIE for many cases and thus revised his “provisional” certification to a “no certification” finding.

Third, the IVA’s use of “provisional” certification is not permitted under the MCD. While it is understandable that the IVA may not be able to address certain items at any given time, such that the IVA may need to defer the issue for a later report, the use of “provisional” certification denotes a premature determination before the facts are gathered and is improper.

Fourth, the IVA did not consider the Additional Commitments of the MCD. The IVA is responsible for determining the accuracy, validity, and reliability of Defendants’ reported compliance with all of the Substantive Requirements of the MCD, which includes the Additional Commitments. His failure to certify compliance with these constitutes a de facto finding of non-compliance.

Fifth, many of these problems result from an inadequate budget. The fact that the consequences of this slow pace (a lack of progress in certification) falls on Defendants is unfortunate but unavoidable given the IVA’s budget limitations.

Plaintiffs addressed these and other concerns in a report responding to the IVA’s draft certification report for Defendants’ 44th Six-Month Compliance Report. See Att. B, Pls. Resp. to Rep. of the IVA re: L.J. Defs. 44th Compl. Rep. (submitted March 14, 2011), which is incorporated by reference. The IVA addressed some of these concerns in his certification analysis for the 45th Report.

2. Additional Commitments. Defendants have yet to comply with many of the Additional Commitments. These issues have been raised in the Problem-Solving Forums.

3. Low compliance numbers. In both the 44th and 45th Reports, Defendants report low compliance levels for key Outcome areas of the MCD. For example, Defendants report that in 3.5% (44th Rep.) and 1.8% (45th Rep.) of their reunification cases, BCDSS facilitated parent visits once per week. Other areas reporting low compliance include reunification cases with service agreements with parents; reunification cases with referrals made for services identified in the service agreement; cases in which BCDSS searched for relatives; youth with transition plans to help them reach independence; placements meeting legal requirements for licensing, health and safety; providing caregivers with information about the children placed in their care; prompt investigation of suspected maltreatment of foster children; timely case plans; involvement of youth in placement decisions; monthly visits of children in their placements; timely comprehensive health assessments; providing necessary health care to children; preschool enrollment; monitoring of educational progress; efforts to obtain special education services; training of caseworkers; and timely transfer of cases. While the low compliance numbers may reflect in part some of the above data problems, they also indicate that many problems remain.

Plaintiffs disagree with some of Defendants' explanations. For example, Defendants claim that some of the low numbers reflect "modern" expectations or involve "measures that are new to the Agency," see Defs. 44th Rep. at 26, yet those requirements (e.g., mental health assessments and "quality" home visits with children) existed in the old Consent Decree.

### **CONCLUSION**

In raising these concerns, Plaintiffs acknowledge and praise the dedication and tireless efforts of the BCDSS Director to address the needs of the children and families in her care. Still, Defendants have a long way to go before the MCD's promise will be met for Baltimore children

and families. The commitments of the MCD require the foremost attention of BCDSS, DHR, and the Governor.

Respectfully submitted,

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/s/

Mitchell Y. Mirviss  
Bar No. 05535  
Venable LLP  
750 East Pratt Street, Suite 900  
Baltimore, MD 21202  
(410) 244-7400  
(410) 244-7742 (fax)  
mymirviss@venable.com

Attorneys for Plaintiffs