

L.J. v. Massinga Independent Verification Agent

Certification Report for Defendants' 73rd Compliance Report

Appendix 2

IVA Response to Defendants' Report on Additional Commitments

(Defendants' 73rd Report, pp. 28-39)

Table of Contents

	<u>Page</u>
1. Preservation and Permanency	2
2. Out-of-Home Placement	7
3. Health Care	15
4. Education	17

1. Preservation and Permanency

There are seven Additional Commitments in the Preservation and Permanency section.

1. *Based on an analysis of the needs of the children and families that come to the attention of BCDSS, BDCSS will determine biennially the level of need and the amount of funds needed to fund in-home family preservation services, separate and apart from the regular program of protective services and safety case management services, to provide each family of a child at risk of removal with in-home family preservation services in a duration and intensity reasonably calculated to enable the child to remain with the family without removal. The DHR Secretary (“the Secretary”) shall include in the DHR budget proposal funds that are sufficient, in the Secretary’s judgment, to ensure that in-home family preservation services are available in the size and scope determined by the assessment and, if included in the Governor’s budget, shall advocate for the appropriation of such funds by the General Assembly.*

Defs.’ Report: In compliance. (Defs.’ 73rd Rep., p. 28-29)

IVA response: Cannot determine compliance due to lack of documentation to support assertions.

Defendants fail to provide any specific data or documentation to support their assertions. They do not provide information as to how many families requested services, the problems presented by those families, what services were provided, the impact of those services or whether those services were provided “in a duration and intensity reasonably calculated to enable the child to remain with the family without removal.” They do not document the number or percentage of children removed or the relationship in time between services and removal.

As urged in prior reports, the parties should determine what data and documentation must be included in an analysis to meet the requirements of this Additional Commitment.

2. *The Secretary shall include funds in the DHR budget proposal that are sufficient, in the Secretary's judgment, to ensure that services and assistance are available for all children (and their families) who come to BCDSS's attention as being at risk of placement into OHP or who are in OHP and have permanency plans of reunification with their families, and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.*

Defs.' Report: In compliance. (Defs.' 73rd Rep., p. 29)

IVA response: Cannot determine compliance due to lack of documentation to support assertions.

For this Additional Commitment, Defendants provide no justification or documentation to explain why the \$4 million in super flex funds is sufficient to meet the requirements of this Additional Commitment. The amount allocated by DHS to BCDSS for flex funds has remained at "over \$4 million" since they began reporting on this Additional Commitment for the 63rd reporting period (2019) through the 73rd report period (2024) without providing documentation of the basis for this amount being sufficient or how it could remain sufficient given the substantial amount of inflation in costs between 2019 and 2024.

This Additional Commitment is closely tied to the first Additional Commitment in this section. Again, as urged in prior reports, the parties should discuss what process or documentation can be provided to demonstrate compliance with this requirement of the MCD.

3. *DHR shall contract for a formal evaluation of the efficacy of its family-centered practice initiatives. This evaluation shall be completed within two years of the signing of this Consent Decree. This contract is subject to any required approvals by the Department of Budget and Management and the Board of Public Works. In addition, DHR/BCDSS shall routinely collect data on the efficacy and safety of its practices in utilizing family-centered practice and team decision-making to avoid the removal of children.*

Defs.’ Report: “BCDSS continues to work to achieve compliance.” (Defs.’ 73rd Report, p. 29)

IVA response: Not in compliance.

The Defendants’ response mentions neither an “evaluation” nor the “collection of data” required by this Additional Commitment. It simply asserts that Defendants continue “to emphasize the use of the FTDM process around critical decision-making.” Given the time frame initially placed on this requirement and the passage of time since the signing of the MCD, we once again urge the parties to discuss what documentation would demonstrate compliance with this requirement in the future.

4. *BCDSS shall continue to provide opportunities for youth in OHP to meet with one another and with the BCDSS Director, other high-level officials, and providers of youth services to talk about problems and needs for children in OHP and to develop effective ways to provide opportunities to express concerns and report problems. With the assistance of youth, DHR shall develop a handbook for youth exiting OHP that provides information on available community resources.*

Defs.’ Report: In compliance. (Defs.’ 73rd Rep., pp. 29-30)

IVA response: Not in compliance.

Defendants do not provide any information other than reiterate that BCDSS leadership meets with youth through attendance at the Youth Advisory Board meeting. Stating that “BCDSS is also committed to developing effective strategies to [meet the requirements of the Additional Commitment]” provides no information upon which a determination of compliance can be made. This is particularly inadequate given the information provided on page 33 of the 73rd Report showing that there are 5 active members of the Youth Advisory Board meaning that the only

assertion of compliance is that leadership meets with 5 out of the approximately 635 youth between the ages of 14 - 20 in BCDSS care during the reporting period.¹

5. *BCDSS shall create an intensive case management plan for youth ages fourteen through twenty who frequently are missing from placement or are experiencing multiple disruptions in placements. These youth shall receive an intensive array of supportive services.*

Defs.’ Report: “The BCDSS Wellness Program fulfills this requirement.” (Defs.’ 73rd Report, p. 30)

IVA response: Cannot determine certification due to a lack of information to support assertion of compliance.

Defendants assert that the requirement is met by the Wellness Program and “more supervisory and team assistance to new case managers” but do not explain how they constitute “an intensive case management plan for youth ... who frequently are missing from placement or are experiencing multiple disruptions in placement” or provide the youth with “an intensive array of supportive services.” The Wellness Program was implemented in January 2023, and this is the first time that the Defendants have claimed that this program fulfills the requirements of this additional commitment. It is unclear how the Wellness Program now meets this additional commitment when it did not do so in the past. Additionally, as discussed in the IVA’s report, the Wellness Program is still not fully implemented and continues to experience recruitment and retention issues with providers and clinicians. Lastly, the Defendants do not provide any information about services beyond therapy that are offered as part of the “intensive array of supportive services.”

6. *By September 30, 2009, DHR/BCDSS, in partnership with outside experts and advocates for children, including Plaintiffs’ counsel, shall create and, thereafter, DHR/BCDSS shall*

¹Data downloaded for *L.J.* Measure 5 for July – December 2024 from CJAMS on 12/21/25.

implement and maintain a plan to provide comprehensive services to children in OHP to meet the goals of the children being ready by age twenty-one for successful transition to adulthood.

Defs.' Report: In compliance. (Defs.' 73rd Rep., pp. 30-34)

IVA Response: Progress towards compliance.

Defendants do not provide any new information in this report about how the activities and services they provide, as impressive the list may be, are effective in meeting “the goals of youth being “ready by 21” for successful transition to adulthood.” They still do not discuss the impact of those strategies. One way to help determine if youth are receiving the necessary services is by examining responses to the mandatory youth survey for youth “aging out” of foster care at age 21. That survey asks youth about whether they have housing, sufficient income for self-support and other necessities at the time of leaving foster care. Of the youth who responded, only 36% reported being ready at age 21 to transition successfully to adulthood.² Defendants fail to put any data forward to support their assertions of the success of their programming.

7. *By December 2009, DHR shall develop and implement a program pursuant to which each child whose caregiver seeks and receives custody and guardianship from the juvenile court and meets the legal requirements for a guardianship subsidy receives such a subsidy in an amount that conforms to the requirements of federal law. Such subsidy shall continue until the child is eighteen years of age or, if disabled or attending school or training, until the youth is 21 years of age.*

Defs.' Report: In compliance. (Defs.' 73rd Rep., p. 34)

IVA response: In compliance.

While this requirement is in technical compliance, it is important to note that the foster care rate to which the guardianship subsidy rate is tied is not in compliance with the MCD (see

² Data downloaded for L.J. Measure 28 for July – December 2024 from CJAMS on 12/21/25.

discussion below) and that inflation is a very serious concern. This rate has remained the same for many years and, given the current high levels of inflation, could not possibly go as far as needed to meet the financial needs and costs of those taking custody and guardianship of children from the foster care system.

2. Out-of-Home Placement

There are ten Additional Commitments in the Out-of-Home Placement section.

1. *By December 31, 2009, DHR/BCDSS shall complete its assessment of the range of placements and placement supports required to meet the needs of children in OHP by determining the placement resource needs of children in OHP, the availability of current placements to meet those needs, and the array of placement resources and services that DHR/BCDSS needs to develop to meet those needs in the least restrictive most appropriate setting, including sufficient family placements for each child who does not have a clinical need for a non-family placement, family placements available for emergency placement needs, placements appropriate to meet the needs of children with serious mental health problems and children with developmental disabilities, and appropriate facilities and programs for semi-independent and supportive independent living. The assessment shall be conducted biennially.*

Defs.' Report: "DHS contracted with Chapin Hall to complete a placement needs assessment for the state that includes Baltimore City. Chapin Hall has completed that assessment and it has been provided to the IVA for review and a determination regarding compliance with this requirement."

(Defs.' 73rd Rep., pp. 34-35)

IVA response: Not in compliance.

As discussed in the IVA's Response to Defendants' 72nd and 73rd Reports, the Chapin Hall Report³ contains much important, useful information about both placement issues and about the lack of documentation in children's records in CJAMS and is cited where applicable. However, it does not fulfill the requirements of this Additional Commitment for a number of reasons, including the following:

1. Defendants limited the scope of the assessment. The Chapin Hall Report, p. 113, states that "[a]ssessing MDHHS' [sic] placement array and provider capacity was not part of the scope of this placement needs assessment. This exclusion made it difficult to examine how much provider capacity, as opposed to other factors (like insufficient placement efforts, youth preference, or providers' inappropriately rejecting referrals), contributed to hospital overstays and stays in hotels and offices."

2. The Chapin Hall Report acknowledges that the forecasts of how many placements of each type would be needed in the next fiscal year was based on a projection of "what might happen in the future based upon what has occurred in the past" and "should not be interpreted to suggest these are the desired distribution of placement settings for children. Whether past placements reflect the best placements for children, and whether these historical patterns should be repeated in the future, requires a deeper examination of the adequacy and appropriateness of these past placements, which was beyond the scope of this assessment." (Chapin Hall Report, pp. 103 - 104).

3. The poor quality of data available in CJAMS "was a significant problem encountered during the assessment which impeded the assessment team's and case reviewers'

³ The Chapin Hall Report is Att. A to Defs.' 72nd Report.

ability to precisely identify child and youth needs and reasons for adverse outcomes such as hospital overstays and stays in hotels and offices.” (Chapin Hall Report, p. 112).

These barriers will need to be overcome for future assessments to meet the requirements of this Additional Commitment and, most importantly, to provide a meaningful tool to drive system improvements. (See discussion at Chapin Hall Report, pp. 3-6.)

2. *The DHR Secretary shall include in the DHR budget proposal funds that are sufficient, in the Secretary’s judgment, to secure and maintain the array of placement resources and supports needed for children and youth served by BCDSS (including those needed to support the stability of placements and the ability of caregivers to meet the needs of children in OHP and to avoid placement of children in congregate care) and, if included in the Governor’s budget, shall advocate for the appropriation of such funds by the General Assembly.*

Defs.’ Report: In compliance. (Defs.’ 73rd Rep., p. 35)

IVA response: Not in compliance.

Defendants rely solely on an assertion that DHS/BCDSS is below the national average for children placed in congregate care and above the national average for children placed with kin. The Defendants have not provided any budget tools or documents that would support the position that they are in compliance with this Additional Commitment. Furthermore, without an adequate assessment of placements resources and needed supports, as discussed above, the Secretary has insufficient information to develop a reasoned judgment as to what funds would be sufficient.

3. *BCDSS shall provide stipends to emergency shelter care homes even in months in which children are not provided care to assure that such homes remain available for emergency placements. The Secretary shall include funds annually in the DHR budget proposal that are*

sufficient, in the Secretary's judgment, to meet these requirements and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

Defs.' Report: In response to this requirement, Defendants cite Plaintiffs' April 2025 status report to the court stating that "Plaintiffs no longer object to Defendants' request to modify the MCD by vacating the requirements for emergency foster homes." (Defs.' 73rd Report, p. 35)

IVA response: Despite the Chapin Hall Report finding that "Placements are also hard to identify on a short-term emergency basis, adding to the occurrence of hospital overstays, office stays, and hotel stays," and recommendation that Defendants "[i]dentify more placement options for children who need short-term or emergency housing,"⁴ this Additional Commitment is now apparently moot.

4. *Within ninety days of this Consent Decree, DHR/BCDSS shall issue an RFP and shall provide funding sufficient to operate a kinship caregiver support center(s) which includes: provision of resource information and support services to caregivers; the development and maintenance of a website; transportation assistance to referrals, activities and appointments related to the care of children; staff training; training for caregivers; and the development and support of a statewide network of support groups for kinship caregivers. This contract is subject to any required approvals by the Department of Budget and Management and the Board of Public Works.*

Defs.' Report: In compliance. (Defs.' 73rd Rep., pp. 35-36)

IVA response: In compliance.

5. *DHR shall set the Semi-Independent Living Arrangement rate at no less than 95 percent of the foster care payment rate for teens by July 1, 2009 and shall make adjustments annually*

⁴ Chapin Hall Report, p. 140.

thereafter to match increases in the foster care rate as included in the budget. To satisfy this requirement, the Secretary shall include funds annually in the DHR budget proposal that are sufficient, in the Secretary's judgment, to meet these requirements and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

Defs.' Report: In compliance. (Defs.' 73rd Rep., p. 36)

IVA response: In compliance.

Defendants apparently are in compliance with this requirement. As Defendants have acknowledged, however, the governing regulations (.07.02.10.15.B(3)) and policy releases for resource home payment increases do not reflect this requirement and need to be updated to guarantee raises in the SILA rate when resource home rates are increased. Defendants have provided no information about when they intend to promulgate the new regulations.

While this requirement is in technical compliance, the foster care rate to which the SILA rate is tied is not in compliance with the MCD (see discussion, below). Given increases in the cost of living, it is unlikely that the stipend could go as far as would be required to meet the financial needs of foster youth in the SILA program. The IVA has shared this concern repeatedly in reports, but the Defendants have provided no new information in their report about plans to increase the resource home, kinship home, SILA, and adoption and guardianship rates.

6. *DHR shall set the foster care payment rate at no less than the Foster Care Minimum Adequate Rates for Children ("MARC") [1]⁵ standard. Until the MARC standard, as adjusted for cost of living, meets the foster care payment rate currently in effect for FY 2009, DHR shall not lower the foster care payment rate below current levels. To satisfy this requirement, the Secretary*

⁵ See University of Maryland School of Social Work, "Hitting the M.A.R.C.: Establishing Foster Care Minimum Adequate Rates for Children" (October 2007) (attached as Exhibit 2 to the MCD). [This is the original footnote from the MCD.]

shall include funds annually in the DHR budget proposal that are sufficient, in the Secretary's judgment, to meet these requirements, and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly. The Secretary shall include funds annually in the DHR budget that are sufficient, in the Secretary's judgment, to modify the foster care payment rate to reflect a COLA adjustment and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.

Defs.' Report: "The foster care payment rate did not change during this reporting period." (Defs.' 73rd Rep., p. 36)

IVA response: Not in compliance.

Defendants do not address the concerns raised in prior IVA responses. In order to meet the MARC and maintain it, Maryland should be providing an annual increase matching the increase in the cost of living. The cumulative rate of inflation has been 25.1% between 2019 to 2025 (usinflationcalculator.com, accessed 4/29/25), yet there has not been an increase in the public foster care board rate since FY2019 when there was a 1% rate increase. In their 66th Report, Defendants stated that an increase in the foster care board rate was planned for January - June 2022. However, no such increase has occurred. Defendants do not even attempt to justify their continuing violation of this requirement.

7. *By September 2009, DHR/BCDSS, with the assistance of individuals knowledgeable about the issues, shall study and develop a plan to address the particularized needs of unlicensed kinship care providers for children in OHP, including remediation of problems discouraging or prohibiting licensure.*

Defs.' Report: In compliance. (Defs.' 73rd Rep., p. 36)

IVA response: In compliance.

8. *To meet the requirements of Outcome 4 (as defined) of this Section to provide funding for child care, DHR/BCDSS shall continue without interruption to provide funding for child care to caregivers to at least the extent required by DHR Policy SSA 08-17 (attached as Exhibit 1). Defendants agree to extend the provision of child care to include before- and after-school care, vacation and holiday care, and sick day care, as needed, for all children ages twelve and under, but only to the extent funds are available from savings generated through the documented reduction in the use of congregate care. To satisfy this requirement, the Secretary shall include funds annually in the DHR budget proposal that are sufficient, in the Secretary's judgment, to meet these requirements and, if included in the Governor's budget, shall advocate for the appropriation of such funds by the General Assembly.*

Defs.' Report: In compliance. (Defs.' 73rd Rep., p. 37)

IVA response: In compliance.

The IVA has no information that caregivers needing childcare have been denied access to the necessary funding. Defendants issued SSA/CW Policy #23-03, Child Care Services for Children in Out-of-Home Care - 1 (eff. 9/25/23).⁶ The policy appears to provide for at least the same services as the old policy, which was found to be compliant.

9. *By September 30, 2009, DHR/BCDSS shall provide documentation of policies and implementation of policies for ensuring that children in OHP who are expecting a child or who are parents receive services and assistance appropriate and sufficient to assist the child to acquire parenting skills.*

Defs.' Report: In compliance. (Defs.' 73rd Rep., p. 37).

⁶ SSA/CW Policy #23-03, Child Care Services for Children in Out-of-Home Care (Effective 9/25/2023). DHS' child welfare policies can be found on its website at <https://dhs.maryland.gov/business-center/documents/child-policy-directives> (last accessed 1/16/26).

IVA response: Not in compliance.

For the same reasons stated in the IVA's previous responses to this Additional Commitment, the IVA is unable to certify compliance. Defendants do not provide information about or documentation of any actual policies that outline and ensure the services. They simply reference their 72nd Report as having laid out "a complete process in provisioning these services." It did not.

The IVA is aware that some services for pregnant foster youth and foster youth who are post-partum up to one year are available through a dedicated staff member in the MATCH program. Defendants do not discuss this program in their report, and the program is not provided as the result of any known state or local policy.

10. By September 30, 2009, DHR/BCDSS shall provide documentation of policies and implementation of policies for ensuring that the input of children and caseworkers was considered in the reassessment, recertification and relicensing of a placement.

Defs.' Report: In compliance. (Defs.' 73rd Rep., p. 37)

IVA response: Not in compliance.

Defendants provide no documentation of policies or implementation of policies for ensuring such input. Defendants state that communication with children's caseworkers to solicit input about care of the children is an important part of every reconsideration and review for resource home and kinship home providers and that resource workers "where possible speak to the child or youth." As with a number of other Additional Commitments, Defendants conflate making a statement in their report with "documentation of policies and implementation of policies." The two are not the same. Defendants' past reports referenced a "template for reconsiderations" which

they stated included “obtaining a child’s input” but this template is not mentioned in the Defendants’ 73rd report and was never provided to the IVA.

3. Health Care

There are four Additional Commitments in the Health Care section.

1. *By June 2009, BCDSS will implement the BCDSS Health Care Initiative for all children newly entering OHP and all children in OHP with complex medical needs. Defendants shall provide Plaintiffs copies of the standards developed by the Medical Director as required in Definition C (2) of this Section.*

Defs.’ Report: In compliance. (Defs.’ 73rd Rep., pp. 37-38)

IVA response: In compliance.

2. *By March 2009, BCDSS shall establish and thereafter maintain a Health Care Advisory Council, including medical experts and advocates for children from outside BCDSS, DHR, and the Department of Health and Mental Hygiene, to provide guidance on implementation of the requirements of the BCDSS Health Care Initiative.*

Defs.’ Report: In compliance. (Defs.’ 73rd Rep., p. 38)

IVA Response: In compliance.

During the reporting period, the Health Care Advisory Council continued to meet quarterly. The Council now has representation from the dental community and two youth on the Council. Parents and caregivers still are not represented on the Council.

3. *By August 2009 and annually thereafter, BCDSS/DHR, in consultation with the medical director and the Health Care Advisory Council, shall develop a plan, a timetable, and a funding strategy for inclusion in the FY 2011 and subsequent budget requests funding sufficient in the*

Secretary's judgment to accomplish full implementation of the requirements of the BCDSS Health Care Initiative for all children in OHP.

Defs.' Report: In compliance. (Defs.' 73rd Rep., p. 38)

IVA response: In substantial compliance.

The Defendants have not provided any documentation to support their claim of compliance related to "consultation with the medical director and the Health Care Advisory Council."

On July 1, 2025, a new contract with Health Care Access Maryland (HCAM) for health care management services went into effect. This contract included an expanded scope of work and an increase in funding. With these additional resources, an increase in compliance rates for the health care measures and improved health outcomes for children in foster care could be expected. However, data shows that some of the health needs of children in BCDSS foster care continue to go unmet, and it is vital for the parties to determine if this is an issue of insufficient funding, flawed deployment of resources, or some other cause.

The IVA encourages the parties to discuss this Additional Commitment and how the requirements can be met.

4. *By December 31, 2010, DHR/BCDSS shall operationalize a system to meet the mental health needs of children in OHP. The system will include access to mental health screening and assessment as well as a continuum of treatment services designed to secure ongoing treatment that meets the needs of children in OHP. DHR/BCDSS will seek the advice and input from the Health Care Advisory Group in the development and implementation of this system.*

Defs.' Report: In compliance. (Defs.' 73rd Rep., p. 38)

IVA response: Not in full compliance.

Lack of quality mental health care services and continuity of services for children, particularly for those who experience placement instability, has been a long-standing and continuing problem. While progress has been made, there are remaining gaps including (1) 24/7 mobile crisis services for foster youth have not been available consistently; (2) referrals to the Wellness Program have been restricted at times due to the lack of sufficient numbers of therapists; (3) the range of therapeutic services available have been limited primarily to traditional one-to-one therapy, a modality which Defendants know does not meet the needs of many youth; and (4) children continue to experience hospital overstays and to remain for extended periods of time in inappropriate placements, at least in part because there are insufficient appropriate mental health treatment services.

See the Chapin Hall Report and the IVA's Response to Defs.' 73rd Report sections on "Placement Needs and Challenges" (pp. 47 – 52) and "Mental Health" (pp. 61 – 63) for further discussion of these issues.

4. Education

1. By September 2009, Defendants will develop an implementation plan reasonably calculated to produce compliance with the education requirements of the federal "Fostering Connections to Success and Increasing Adoptions Act."

Defendants' Report: In compliance. (Defendants' 73rd Rep., p. 39)

IVA response: In compliance.

Defendants' statewide Education Stability Policy⁷, BCDSS' MOU with the Baltimore City Schools, and BCDSS maintaining an Office of Education demonstrate development of an implementation plan reasonably calculated to produce compliance with the above-referenced law.

⁷ SSA/CW Policy #23-04, Education Stability (Effective 12/15/2023). DHS' child welfare policies can be found on its website at <https://dhs.maryland.gov/business-center/documents/child-policy-directives> (last accessed 1/16/26).

Looking at the impact of these efforts, the BCDSS October 31, 2025 Foster Care Milestone Report does show an open 2025 - 2026 school record for substantially all of the 5 - 17-year-olds in BCDSS custody. Unfortunately, Defendants have yet to complete the reports for Internal Success Measures 95 and 96 and Exit Standard 99 which would provide data to show whether or not children are being enrolled timely in school upon entering OHP and upon change of placement as required by the Fostering Connections Act.