

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

KENNY A., by his next friend Linda Winn, et al.,	:	
	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	CIVIL ACTION
	:	1:02-cv-1686-TWT
	:	
NATHAN DEAL, et al.,	:	
	:	
Defendants.	:	

**JOINT MOTION FOR ENTRY OF MODIFIED CONSENT DECREE  
AND EXIT PLAN**

Plaintiffs<sup>1</sup> and State Defendants<sup>2</sup> (collectively, the “Parties”), by and through their undersigned counsel, jointly request modification of the Consent Decree [Dkt.

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<sup>1</sup> Kenny A., by his next friend Linda Winn, Kara B., by her next friend Linda Pace, Maya C., by her next friend Linda Pace, Phelicia D., by her next friend Theresa Roth, Sabrina E., by her next friend Rebecca Silvey, Korrina E., by her next friend Rebecca Silvey, Tanya F., by her next friend Carol Huff, Priscilla G., by her next friend Roslyn M. Satchel, and Briana H., by her next friend Linda Pace, on their own behalf and on behalf of all other similarly situated.

<sup>2</sup> Nathan Deal, in his official capacity as Governor of Georgia, the Georgia Department of Human Resources, Robyn A. Crittenden, in her official capacity as Commissioner of the Georgia Department of Human Services, Fulton County Department of Family and Children Services, Glenene Lanier, in her official capacity as County Director of Fulton Division of Family and Children Services, the DeKalb County Division of Family and Children Services, and Kimberly Mobley, in her official capacity as Acting County Director of DeKalb Division of Family and Children Services.

No. 488], as amended by the Joint Stipulation and Order to Modify the Consent Decree Regarding Reimbursement Rates for Placements [Dkt. No. 613], the Stipulated Modification of Consent Decree [Dkt. No. 687], and the Joint Stipulation and Order to Modify the Consent Decree Regarding Accountability and Monitoring [Dkt. No. 740] (hereinafter referred to as the “2015 Consent Decree”). If this motion is granted, the proposed Modified Consent Decree and Exit Plan (attached hereto as Exhibit A) will replace the 2015 Consent Decree in its entirety.

### **Background**

Plaintiffs brought this class action lawsuit seeking declaratory and prospective injunctive relief based upon alleged violations of constitutional and statutory rights arising out of the operation of foster care systems in Fulton and DeKalb counties. On August 13, 2003, the Court certified a class consisting of “[a]ll children who have been, are, or will be alleged or adjudicated deprived who (1) are or will be in custody of any [] State Defendants; and (2) have or will have an open case in Fulton County DFCS or DeKalb County DFCS.” Dkt. No. 193.

Prior to trial, the Parties negotiated a resolution embodied in the terms of the Consent Decree, which requires certain reforms to Fulton and DeKalb counties’ foster care systems and establishes specific benchmarks for progress. The original Consent Decree was entered on October 28, 2005. Since that time, as noted above,

the Court has approved modifications agreed to by the Parties. See Dkt. Nos. 612, 687, 740.

### **Negotiations to Modify the Consent Decree**

In July 2015, Class counsel initiated discussions with State Defendants' counsel aimed at modifying the 2015 Consent Decree to streamline obligations in recognition of progress, remaining challenges, and changes in best practice standards in foster care. The Parties discussed improving the outcome measures used to assess State Defendants' performance and maximizing the technical assistance of the Accountability Agent, Karen Baynes-Dunning, and the Monitoring and Technical Assistance Team ("MTAT"). And a significant part of these discussions was the Parties' effort to chart a course towards the termination of this Court's supervision over State Defendants' administration of foster care in Fulton and DeKalb counties.

Over the course of a year, State Defendants and Class counsel negotiated the proposed Modified Consent Decree and Exit Plan. With the Accountability Agent's assistance, the Parties exchanged a number of proposals and counter-proposals, participated in several telephone conferences and in-person meetings, and called upon the expertise of the Accountability Agent and the MTAT to

provide and interpret data. After these extensive, arm's-length negotiations, the Parties have agreed to the proposed Modified Consent Decree and Exit Plan.

**Proposed Modified Consent Decree and Exit Plan**

The proposed Modified Consent Decree and Exit Plan modifies the 2015 Consent Decree in the following areas: (1) placements, (2) visitation, (3) outcome measures, (4) process/infrastructure requirements, (5) terms upon which State Defendants demonstrate compliance with and may move for termination of the proposed Modified Consent Decree and Exit Plan, and (6) dispute resolution provisions. The modifications in each of these areas are summarized below.

*First*, the proposed Modified Consent Decree and Exit Plan provides for additional mechanisms for oversight over the placement of children in certain situations. Specifically, State Defendants are required to notify the Accountability Agent if a child is placed in more than one temporary facility within one episode of foster care or remains in a temporary facility for more than 30 days. Similarly, if a child is in a county DFCS office between 8:00 p.m. and 8:00 a.m., State Defendants are obligated to report that event to the MTAT. In addition, the proposed Modified Consent Decree and Exit Plan incorporates State Defendants' commitment to phase out the use of hotels as placements for children in foster care within DeKalb and Fulton counties by June 30, 2017.

*Second*, the proposed Modified Consent Decree and Exit Plan clarifies that face-to-face visits for children in all placements, except adoptive placements, must occur earlier in the placement in order to monitor and document the child's adjustment to the placement, the appropriateness of the placement to meet the child's needs, the receipt of appropriate treatment and services by the child, the child's safety, and service goals.

*Third*, the proposed Modified Consent Decree and Exit Plan includes revised and improved outcome measures. Specifically, it replaces outdated outcome measures used to assess State Defendants' performance regarding re-entry, maltreatment in care, discharge to permanency, and multiple placement moves. The new measures contained in the proposed Modified Consent Decree and Exit Plan will more appropriately reflect State Defendants' performance in these areas. In addition, the proposed Modified Consent Decree and Exit Plan adjusts the sibling placement outcome measure to include exceptions based on safety, exceptional needs of a child, size of the sibling group, and placement of siblings with relatives. Moreover, the proposed Modified Consent Decree and Exit Plan changes the composite structure of an outcome measure tied to meeting children's service needs to separate and increased requirements for meeting children's medical, dental, mental health, and education/development needs.

*Fourth*, the proposed Modified Consent Decree and Exit Plan recognizes the need for improved process/infrastructure requirements, which are designed to measure the foundational elements of the child welfare system. It establishes a framework for the creation of new standards. Specifically, it requires the Accountability Agent and the MTAT to review current practice and recommend measurement changes, and allows the Parties to negotiate based on those recommendations. If the Parties are unable to agree upon any of the proffered recommendations, the Accountability Agent will issue a binding decision.

*Fifth*, the proposed Modified Consent Decree and Exit Plan provides a revised mechanism for State Defendants to qualify for exit from the Court's supervision. The mechanism is based on classification of each outcome measure as "attained" or "ongoing."

Under the proposed Modified Consent Decree and Exit Plan, an outcome measure is initially designated as attained or ongoing depending on the measure of State Defendants' performance in the reporting periods before entry of the proposed Modified Consent Decree and Exit Plan (if approved). Those initial designations may change depending on State Defendants' performance. If State Defendants' performance on a particular outcome measure designated as attained declines, the proposed Modified Consent Decree and Exit Plan empowers the

Accountability Agent, with the assistance of the MTAT, to assess the reason(s) and issue findings as to whether that outcome measure will be re-designated as ongoing. Likewise, if the State Defendants' performance on a particular outcome measure designated as ongoing improves for one reporting period, and then complies with the performance target for the following two consecutive periods, that measure will be designated as attained.

When all of the outcome measures are designated as attained, State Defendants may seek an order from this Court terminating the Modified Consent Decree and Exit Plan.

*Sixth*, the proposed Modified Consent Decree and Exit Plan contains a revised dispute resolution process that seeks to resolve differences through negotiations by the Parties with the assistance of the Accountability Agent before raising an issue with the Court.

### **Conclusion**

The Parties seek to address changes in best practices regarding process/infrastructure requirements and outcome measures in the 2015 Consent Decree, create a streamlined dispute resolution process, and outline the path for State Defendants to terminate this Court's supervision of foster care in Fulton and DeKalb counties. After a year of negotiation with the assistance of the

Accountability Agent, the Parties agree that the proposed Modified Consent Decree and Exit Plan will achieve these goals, protect the Class's interests, and further the purpose of the 2015 Modified Consent Decree.

Therefore, the Parties respectfully request that the Court grant this Joint Motion for Entry of the Modified Consent Decree and Exit Plan. A proposed order is attached for the Court's consideration.

Respectfully submitted, this 9th day of November, 2016.

/s/ David G.H. Brackett

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing **JOINT MOTION FOR ENTRY OF MODIFIED CONSENT DECREE AND EXIT PLAN** with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all attorneys of record

This 9th day of November, 2016.

*/s/ David G.H. Brackett*  
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DAVID G.H. BRACKETT