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United States District Court, E.D. Louisiana.

DEL A, et al.

v.

Edwin EDWARDS, et al.

CIV. A. No. 86-0801. | Jan. 25, 1990.

MEMORANDUM AND ORDER

MINUTE ENTRY

SEAR, District Judge.

*1 Plaintiffs in this civil rights action challenge the adequacy of the State of Louisiana's child welfare system. The suit was filed in 1986 by the next friends of fifteen children¹ in the care of Louisiana's Department of Social Services on behalf of these children and all others similarly situated. Plaintiffs seek declaratory and injunctive relief against defendants² for alleged violations of rights guaranteed by the United States Constitution and by the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, 42 U.S.C. §§ 620*et seq.* and §§ 670*et seq.* ("96-272").

Plaintiffs allege that Louisiana's child welfare system is deficient in almost every area, and that plaintiffs are harmed by these deficiencies. Specifically, plaintiffs allege that defendants failed to: maintain an adequate system to timely investigate allegations of abuse and neglect; make reasonable efforts to prevent foster care placement; provide timely and adequate case plans; provide adequate services to assure permanent placement of children in foster care; place foster children in the proper setting; properly train social workers charged with the supervision of foster children and foster families; and maintain an adequate information system.

Defendants contend that, having passed the last three reviews of State performance under 96-272 by the U.S. Department of Health and Human Services, the State was and is in substantial compliance with the requirements of

96-272.³ Further, defendants contend that Congress's failure to timely appropriate sufficient funds to implement 96-272 hampers the State's ability to provide the quality of services the State is obligated to provide.⁴

Following two days of a trial on the merits on March 6-7, 1989, at which plaintiffs presented evidence concerning three named plaintiffs,⁵ plaintiffs and defendants agreed to suspend proceedings and permit their designated experts⁶ to assist the Court in developing a plan designed to cure the alleged deficiencies of the State's child welfare system. Defendants agreed that the plan would apply to all children in Louisiana in foster care or in danger of being placed in foster care.

On August 18, 1989, the experts submitted the first draft of a Proposed Plan for Improvement of the Louisiana Child Welfare System ("the Plan") to the Court. At a status conference in chambers on August 25, 1989, the plan was distributed to the parties for comment to be received by September 15, 1989. Upon consideration of the comments received from the parties, the experts revised the Plan and resubmitted the Plan to the Court on October 25, 1989. I then ordered counsel for the parties to show cause on November 8, 1989 why the revised Plan should not be adopted. Following the hearing, I met with the experts and discussed further revisions of the Plan with them.

The final Plan was submitted to the Court on November 27, 1989. A final status conference was held in chambers on December 13, 1989 in an effort to resolve the remaining differences between the parties. The parties failed to reach agreement, and therefore they must content themselves with my resolution of the remaining differences.

DISCUSSION

*2 The court has jurisdiction to fashion appropriate relief designed to secure compliance with the fourteenth amendment and the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, 42 U.S.C. §§ 620*et seq.* and 42 U.S.C. §§ 670*et seq.* ("96-272"). See *Lynch v. King*, 550 F.Supp. 325, 342 (D.Mass.1982) (Keeton, J.) (citing *Rosado v. Wyman*, 397 U.S. 397, 420, 90 S.Ct. 1207, 1221 (1970)), *aff'd sub nom. Lynch v. Dukakis*, 719 F.2d 504 (1st Cir.1983). In this case, the experts representing the parties have spent considerable time and effort developing a plan designed to remedy the violations complained of in a manner consistent with the

requirements of 96–272⁷ and the standards of good child welfare practice. In fact, the Plan goes beyond the requirements of 96–272 in many areas. Because the Plan is unquestionably better than a judicially imposed remedy without the benefit of the dedicated experts who prepared this one, I begin by adopting the Plan as set forth in full in Appendix A.

Plaintiffs’ objections relate primarily to the enforcement of the Plan.⁸ They fall into three categories. First, plaintiffs urge that the caseload limits described in the Plan be mandatory. Second, plaintiffs stress that the Plan is vague with respect to deadlines for required action, particularly in the sections of the Plan covering Child Preventive Services and Permanent Placement. Third, plaintiffs object to the Plan’s seeming tolerance of improperly trained case workers in critical decision-making positions.⁹

Defendants do not object to the Plan as written. Defendants contend, however, that the modifications sought by plaintiffs go beyond the requirements of the Constitution and 96–272. If defendants are correct, the relief plaintiffs seek is not within my power to grant, because I can order relief against state officials only to the extent permitted by federal law. *See Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 104 S.Ct. 900 (1984); *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347 (1974).¹⁰ I turn now to a consideration of whether, in light of the constitutional and statutory requirements applicable to this case, the Plan requires modification.

I. Mandatory Caseloads

Plaintiffs argue that if the caseload standards contained in various portions of the Plan¹¹ are to mean anything, they must be definite and binding upon defendants. Neither the Constitution nor 96–272 contains a caseload requirement, but plaintiffs cite numerous decisions in which mandatory caseloads were either imposed upon defendants despite defendants’ objections or agreed to by the parties. *See, e.g., Lynch v. Dukakis*, 719 F.2d 504, 514 (1st Cir.1983) (court order); *G.L. v. Zumwalt*, 564 F.Supp. 1030, 1036 (W.D.Mo.1983) (consent decree); *Joseph A v. New Mexico Department of Social Services*, 575 F.Supp. 346, 356 (D.N.M.1983) (consent decree); *L.J. v. Massinga*, 699 F.Supp. 508, 519 (D.Md.1988) (consent decree).

*3 As defendants point out, however, the mandatory caseloads imposed or agreed to in these cases apply to children in state care only. Thus, where the Plan applies to children in state care, the Plan’s language is mandatory. *See* Plan section I(B)(4) (Foster Family Care): “Workers will be assigned no more than ...” (Emphasis added).

Further, the caseloads provided for in this section of the Plan are entirely consistent with the caseload standards discussed in the cases cited here. Accordingly, I find that section I(B)(4) requires no revision.

But where the Plan applies to children who are not in state custody, defendants argue, 96–272’s requirements need not be so exacting. Rather, 96–272 only requires defendants to make “reasonable efforts” to prevent or eliminate the need for removal of children from their homes prior to the placement of children in state custody,¹² and therefore the caseload suggestions contained in the Child Protective Services and Family Based Services sections of the Plan (sections I(A)(1) and I(A)(2)) are not mandatory.

A clear reading of 96–272 persuades me that as to children who are not in state custody, the State has discretion as to how it will make reasonable efforts to prevent placement.¹³ Further, reasonable efforts are determined on a case-by-case basis.¹⁴ It may well be that mandatory caseloads for child protective and family services workers are a good idea, but where the State has set standards which conform to national standards, I cannot say that the Plan fails to meet the reasonable efforts requirement.

The Plan’s caseload standards for adoption workers (section I(C)) are a different matter. Although 96–272 employs the “reasonable efforts” standard as a measure of the State’s obligation to make it possible for children to return to their homes,¹⁵ the State’s obligations to children in custody remain unchanged. Thus, at least one state has agreed to adhere to mandatory caseload standards for adoption workers. *See, e.g. Joseph A.*, 575 F.Supp. at 356.

The experts advise me, however, that mandatory caseloads for adoption workers are a mistake. The experts agree that the dynamics of the adoption process are such that mandatory caseloads interfere with the agency’s ability to allocate its available resources in the best possible way, particularly at this early stage in the Plan’s implementation. Further, I note that the Plan’s suggested caseload standards for adoption workers are consistent with national standards. *See* Plan section I(C), at 8. These factors convince me that mandatory caseloads for adoption workers are inappropriate at this time.¹⁶

II. Timelines

A. Child Protective Services—Investigations of Abuse or Neglect

Plaintiffs suggest that the Plan incorporate Chapter 4 of

the Division of Children, Youth, and Family Services' Child Protection Policy Manual. Specifically, plaintiffs refer to former sections 4-510¹⁷ and 4-525(A) & (C)¹⁸ and suggest mandatory timelines for responding to allegations of abuse, initiating investigations, and determining appropriate action in each case.

*4 Again, to the extent the Child Protective Services section of the Plan (section I(A)(1)) applies to children who are not in state care, defendants rely upon the argument that neither the Constitution nor a statute imposes a timeline obligation upon the State for investigations of neglect and abuse involving children not in foster care.¹⁹

That the Constitution imposes no such duty was made clear by the Supreme Court in *Deshaney v. Winnebago County Department of Social Services*, 109 S.Ct. 998 (1989). *Deshaney* involved a child who was brutally beaten and permanently injured by his father. Despite several complaints of child abuse and repeated contacts between the Department of Social Services and the family prior to the incident, the Department failed to intervene and remove the child from his home. Stating that "the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual,"^{109 S.Ct. at 1003}, and that "the State cannot be held liable ... for injuries that could have been averted had it chosen to provide protective services,"^{id. at 1004}, the Court held that the Department's failure to protect the child did not violate the due process clause. *Id.*

Turning to other sources of authority for imposing mandatory timelines upon abuse or neglect investigations, plaintiffs invoke the timeline provisions of 96-272 (applicable to case plans and case reviews) to demonstrate the universal applicability and utility of timelines.²⁰ However useful or successful timelines may be in investigating allegations of abuse or neglect, 96-272 leaves the determination in the hands of the State, requiring only that the State make reasonable efforts in each case to prevent placement. *See generally, Reasonable Efforts Protocol.*

Finally, plaintiffs cite certain provisions of the Child Abuse Prevention, Adoption, and Family Services Act of 1988, Pub.L. 100-294, 42 U.S.C. §§ 5106(b)(1)(A), (2), (4), (5) and (10).²¹ This statute applies to states receiving funds under 96-272. It requires that abuse and neglect investigations be conducted promptly, but it does not set forth specific timelines. As with 96-272, it is the State's responsibility to determine the seriousness of the case and

the degree of promptness required of the investigation.

Thus, federal law does not impose mandatory timelines upon investigations of allegations of abuse or neglect of children not in state care. If the State has determined that it can make reasonable efforts to prevent placement in the absence of such timelines, I will not at this time second-guess the State's judgment.

B. Adoptions

Adoption timelines present a different problem than abuse and neglect timelines, because adoption timelines involve children in state custody. Plaintiffs suggest streamlining and formalizing the process by which parents' rights are terminated and the child is placed in an adoptive home. While at least one court has approved a consent decree containing adoption timelines, *see Joseph A*, 575 F.Supp. at 358-60, the Court's experts have expressed doubts about the effectiveness of timelines.

*5 According to the experts, timelines generate an undue administrative preoccupation with an arbitrary measure of performance. This preoccupation detracts from the agency's ability to effect the best possible long-term placement for the foster child. As the experts point out, timing is a critical element in the adoption process. The decision to place a child should depend upon the needs of the child and the family, not upon the need to meet an arbitrary timeline.

Further, the experts state that the semi-annual reviews of each case plan required by 96-272 will provide adequate measures of each child's progress through the adoption process. I agree. Therefore, I believe that the best course at this nascent stage of the Plan's existence is to not impose adoption timelines, but rather to give the State some flexibility.²²

III. Training

Plaintiffs' final objection to the Plan is that it permits untrained or inadequately trained personnel to make critical decisions about removal and placements. Section II(B) of the Plan provides, in relevant part:

All employees shall receive individualized on-the-job training and formal classroom training prior to exercising responsibility for cases. The completion of the agency's required formal training may be delayed on an emergency basis if the unavailability of these employees pending such training would result in the agency's inability to meet the needs of abused or neglected children or to satisfy legal mandates, provided that the required

formalized classroom may not be delayed beyond sixty days.

Defendants contend that this provision applies only to the formal, centralized training that all employees receive; the agency will permit no employee to make such decisions without individualized training and supervision from the employee's supervisor. This provision simply allows the supervisor to prioritize cases and assign the more complex cases to trained personnel.

Based upon the training requirements in similar cases, it appears that the training requirements defendants intend to implement go beyond the norm. *Compare L.J. v. Massinga*, 699 F.Supp. at 519-20; *G.L. v. Zumwalt*, 564 F.Supp. at 1036-37. In addition, it is apparent that training requirements in these cases have made allowance for on-the-job training. *Id.* So long as the actual decisions are made by formally trained social workers under the direction of qualified supervisors, participation in those decisions by trainees can cause little harm.

CONCLUSION

The Plan for Improvement of the Louisiana Child Welfare System prepared by Dr. Jeanne Hunzeker and Brenda Kelley is excellent. I am impressed by the dedication of the parties and the experts to the reform of Louisiana's child welfare system. I am also impressed with the significant gains that have been made since the filing of this action. From the beginning, I was convinced that much could be accomplished in a spirit of cooperation. Although the parties did not completely resolve their differences, the essential structure of Louisiana's child welfare system for the foreseeable future has been put into place.

*6 Accordingly,

IT IS ORDERED that the Plan for Improvement of the Louisiana Child Welfare System attached hereto as Appendix A is adopted;

IT IS FURTHER ORDERED that a status conference to discuss the progress of implementation of the Plan be held in chambers on June 13, 1990 at 8:30 a.m. and counsel for the parties, Ms. Brenda Kelley, and Dr. Jeanne Hunzeker shall attend;

IT IS FURTHER ORDERED that the Court retain jurisdiction over this action for the purpose of monitoring implementation of the Plan pending further order of the

Court;

IT IS FURTHER ORDERED that the Clerk of Court mark this action closed for statistical purposes.

APPENDIX A

REPORT TO THE COURT: DEL A. CASE

PHILOSOPHY FOR PUBLIC CHILD WELFARE PRACTICE

1. A fundamental goal of public child welfare practice is the protection of children at risk of harm.
2. The current philosophy of public child welfare practice is family centered child focused which requires a conscious balancing of family "right to privacy" and "freedom from intrusion" with the child's right to protection from harm.
3. A basic principle of public child welfare practice today requires that every effort be made to assist families in providing the necessary care and protection of their children in their own home.
4. When families are unable, for whatever reason, to provide the basic care needed for protection and development of their children, and the state must intervene, children should be assured of the necessary and proper care most appropriate for their individual needs.
5. All children placed outside their own home need to be assured of a timely and appropriate plan and the efforts necessary to secure a permanent stable family setting.
6. Public child welfare programs require knowledgeable, skilled, committed personnel who embrace the above principles and are willing to assume the tremendous responsibilities of working with the multiple issues involved with the kinds of families needing state intervention. This type of staff commitment necessitates the ability to make the professional judgments which assures the best interest of children being served as well as protecting the rights of the parents.
7. Administrators of public child welfare systems recognize the importance of the mandates placed upon the system by lawmakers and taxpayers, to be accountable

and effective in the management of public resources.

8. The overriding philosophy of public child welfare practice is the timely provision of the services needed to meet the needs of the family and child which protects the rights and interests of both.

To support the above philosophy a good public child welfare system offers a well integrated and continuous range of services, skilled and knowledgeable workers delivering these services, and an efficient, sophisticated, supportive, and committed supervisory and administrative staff which supports, enhances, and monitors line staff performance, identifies and captures needed resources, makes available the tools and programs which support service provision, and holds every level of the system accountable to fulfilling the agency mission and mandate.

*7 The service components of the Louisiana system which need attention, development and/or enhancement in order to move toward the above stated "good" child welfare system, are as follows:

1. *Skilled, prompt, and sensitive intake service* which provides a highly differentiated assessment and disposition at the point of entry into the system. Crisis intervention and brief service is made available at intake when there is an emergency situation or when brief problem solving may be helpful and appropriate.

2. *Intensive family services* are made available to families that, without such services, would be unable to provide a safe environment for their children and out of home placement appears to be the only option.

3. *Ongoing Family Preventive and Support Services.* These services are made available to marginal families where placement may well not be necessary but help is needed in enhancing the quality of child care and of life for the total family. Such services can reverse the disorganizing and destructive variables undermining family function and prevent further deterioration and perhaps eventual placement.

4. *Foster Care.* This is defined as a short term service to be utilized only in situations where it is impossible for children to remain at home. Foster parents are defined not so much as substitute parents but as team members who work with agency staff and parents toward permanency. Intensive work and case management services are offered to families to help them get to the point where the children can be returned home.

5. *Adoption Services.* These services are utilized when it becomes apparent that the biological family will be unable to resume care of the children. They include

helping the parents relinquish parental rights, preparing for court action on termination should the parents be unable or unwilling to do this, and preparing the child for adoption. These services include developing adoptive homes, placing the child, providing services as needed to support the placement, and providing post adoption, even post finalization services to enhance the quality of the adoption and prevent disruption.

6. *A computerized tracking system* through which every child can be located and followed through the continuum of services.

7. *A time schedule* which defines "timely" by setting limits for how long a child or family could remain in any phase of service. This time schedule should be tied to the computerized tracking system so that at any time reports can be generated giving full information on the progress of the caseload and identifying any child or family not moving through the system in a timely fashion.

8. *Shared decision making processes and written records of these processes and decisions.* A thorough assessment and a case plan based on that assessment, formulated by those involved in the situation, shall be developed in each case. This plan is the blueprint that defines services to be delivered, goals to be achieved, and time schedules. The plan is used to direct and monitor progress and should be reexamined on a regular basis and modified if that is proved to be necessary.

*8 9. *A formalized review process* shall exist whereby each case, each plan, and the progress on each plan, is reviewed.

10. *Maintenance of continuity of care.* Administrative procedures and case management must guarantee that cases move through the phases of service and that some continuity of personnel exist. Help is best used and changes accomplished in the context of a supportive and understanding relationship and a great deal is lost when families and children are shifted from worker to worker. Further, it is frequently when families and children move from one service to another with a change in worker and supervisor that they are lost in the cracks. Consistent human connection as well as computer tracking is essential in maintaining a continuity of care.

**PLAN FOR IMPROVEMENT OF LOUISIANA
CHILD WELFARE SYSTEM**

INTRODUCTION

The Louisiana child welfare system needs a well

integrated and continuous range of services. It needs skilled and knowledgeable workers to deliver these services. And, it needs an efficient, supportive and committed supervisory staff who support, enhance, and monitor line staff. The administration needs to identify and capture needed resources and make available the tools and programs which support the services. It needs to hold every level of the system accountable to fulfilling the agency mission and mandate in order to assure quality services to the children and families in need of assistance. In light of this recognition, the following document is prepared in order to specify the various components requiring initiation and/or enhancement within the current system.

In order to assure a comprehensive, integrated and continuous services system for children and families in Louisiana, this document represents a plan for revising and modifying the current state system. The plan is developed with identified outcomes.

The plan includes four (4) sections. The first encompasses programs and services, specifically reflecting a continuum of services beginning with "up front" programs; then maintenance programming for children and families in the foster care system; and finally the permanent substitute services; i.e., adoption, transfer of custody, and independent living. The second section includes a comprehensive training plan for all staff and foster/adoptive parents, as well as specialized training by program assignment. System and management reorganization and modifications are included in section three. The fourth section contains certain child specific, family focused programming requirements.

I. PROGRAMS AND SERVICES

A. Preventive Services: "Up Front"

Resources will be expanded in the "front-end" of the continuum of child welfare services. These expanded resources and the initiation of such services focused on avoiding or reducing foster care placement reflects good child welfare practice.

This emphasis in reorganization of services would move the agency toward more comprehensive preventive services and provide more resources and services to families to assure that children are not placed in foster care unnecessarily. These up-front components will include three distinct units of service: Child Protective Services; Family Based Support Services; and Intensive Family Services programs.

*9 To assure the enhancement of the current services delivered within the Child Protective Services units as well as the expansion and development of family based services and intensive family services programs the following action will be undertaken.

1. Child Protective Services

The Child Protective Services Program will be responsible for the intake function of the agency and will have four components within the intake function. These four components are:

- a. investigation of allegations of child abuse and neglect including determination of risk of harm to the child;
- b. accurate and complete assessment of the family's needs and services required to meet the immediate needs of the child and family to protect the child and, if possible, preserve the family unit;
- c. provision of immediate short-term emergency services to the family and/or referral to family based support services, intensive family services, and/or other community service programs; and
- d. decision on case disposition.

Case disposition and referrals for other services should be completed within thirty (30) days, unless extenuating circumstances involved in completing the investigation are present which should be fully documented in the case summary.

Child protective services staff shall have responsibility for investigations of abuse/neglect allegations in foster homes. Investigations shall be conducted in accordance with agency policy and procedures outlined in Child Protection Policy, Chapter 4, Part 12, and Policy Procedure Memorandum 88-28. The agency plans to review all child protection policy which shall include investigations of abuse/neglect allegations in foster homes.

National child welfare standards adopted in 1988 indicate workers in child protective services should carry no more than 10 to 12 new cases per month and should not exceed a combined caseload of 16 new and ongoing cases per month.

2. Family Based Services

The interventions provided by the family based services staff to families in their own homes will include meeting

the immediate and urgent needs of the family with services, such as respite or day care, housing or shelter, removal of perpetrator, 24 hour crisis homemaker, and other concrete assistance as may be required. This unit will develop the case plan and make reasonable efforts to assure that appropriate services are provided to prevent placement of children as well as protect children from harm.

National child welfare standards suggest staff should be well-trained child welfare practitioners (Bachelor's degrees and Master of Social Work degrees) with a caseload of 18 to 20 families in a one month period and carry the family for 3 to 6 months of service.

3. Intensive Family Services

Intensive Family Services will be expanded in the state system. This type of program focuses on providing highly intensive services to families in their own homes for relatively brief periods of time. The purpose is to avert whatever crisis, or ameliorate whatever family situation, is creating the imminent risk of removal of the children and to enable the family to establish a situation that would permit the children to remain at home and the family together. Nationally, this program has been found to be very effective in preventing placement of children and cost-effective and cost-saving in implementation.

***10** Since it is known, through demonstration and research findings around the country that this program works, the state shall implement a "mixed" delivery approach; i.e., using the private sector and public agency staff to deliver intensive family services. The agency will use family services specialists, MSW staff who are trained in intensive family services in this program, and workers will be responsible for 2 to 4 families during every eight week period. This caseload standard is suggested by nationally recognized experts in the field of practice. This unit will develop the case plan and make reasonable efforts to assure that appropriate services are provided to prevent placement of children as well as protect children from harm.

The agency will collect data to determine the impact of preventive services in reducing foster care placements in selected areas of the state.

The outcomes of an enhanced and expanded preventive service system would include:

a. a better initial assessment of families coming to the attention of the public agency;

b. more efficient use of resources through targeting the children and families most at risk of dissolution;

c. a reduction in the number of children entering the foster care program; and

d. the opportunity for more timely reunification of children with their families with the development of more community-based services to prevent family dissolution.

B. Foster Family Care: Maintenance Programming

When children are removed from their own homes, it is necessary to have sufficient, appropriate and available a wide variety of placement resources in order to meet the needs of individual foster children and their families. The case manager is responsible for working with the family and the child toward reunification of the family unit.

These placement resources should include foster family homes that work with the agency and provide treatment and other specialized services.

The foster family system will be expanded and refined by the agency through the following actions:

1. All categories of foster family care will be clearly delineated among the currently certified homes.

2. All categories of foster homes will be clearly defined in terms of expectations—both agency responsibility and foster home—by signed agreements—to be developed and signed by all parties.

3. All foster families will be notified of the category they are assigned to and receive appropriate specialized training (see Training, Section 2) to meet the agreement referenced above.

4. Foster family care workers will be assigned workloads that reflect a differentiated caseload which reflects the individual needs of the children served. Workers with children placed in regular foster families will be assigned no more than 20 to 25 children and their families and whatever number of foster homes that entails. Workers with children with special needs will be assigned no more than 15 to 20 children, their families and whatever number of specialized foster families than entails.

***11** 5. Two home visits must occur during the first 30 calendar days following placement with one of them being during the first week of placement.

Following the first thirty calendar days of placement, in-

home visits between foster parents and the Foster Care Worker and visits between the worker and the child shall be based on need, but shall occur at least once per month.

The visits with the foster parents are in addition to the visits with the foster children. They may occur during the same visit to the home as a visit with a foster child but the meeting with the foster parents shall be separate from the meeting with a foster child.

Visits between foster children and natural parents shall be adhered to as provided in Foster Care Policy 6-615, Page 1-5, and Policy 6-435.

6. No child will be placed in a foster home, including relative placement, which is not approved and supervised by the agency. Emergency placements shall be authorized in accordance with state law.

Foster care and homefinding staff shall participate in abuse/neglect investigations in foster homes as prescribed in Foster Care Policy, Chapter 6, Part 6, Section 655 and Policy Procedure Memorandum 88-28.

7. Children placed in foster care will receive a complete physical exam upon entering placement and at least annually thereafter.

The outcomes expected from a refined and specialized foster family care system are:

- a. reduce the number of children experiencing multiple placements;
- b. reduce the average length of time children stay in foster care;
- c. provide a timely permanent home for each foster child;
- d. provide to each foster child adequate supervision, quality care, and services to meet his/her needs;
- e. to involve foster parents in the planning and decision-making process for the children in their care;
- f. to involve natural parents (where appropriate) in visitation and planning for the care of their children; and
- g. better trained and specialized foster parents to meet the varied needs of the children in the system.

C. Permanent Substitute Services: Adoption

A permanent family for every foster child is the

overriding goal of good child welfare practice. As such, the programs for children and families who enter the child welfare system must include services that enable children to return home as their permanent placement or be placed into an adoptive home as a permanent substitute placement.

It is recommended that the agency take the following actions:

1. Recognize that "adoptability" of a child is not a factor in selecting adoption as the goal of the permanent plan.
2. When adoption has been determined as the permanent plan for a child, the agency will secure parental surrender, abandonment judgment, or termination of parental rights judgment in a swift and timely manner.
3. At the time the plan of adoption has been determined for a child, an adoption worker will be assigned simultaneously with the initiation of the efforts of the foster care worker to free the child for adoption.
- *12 4. The adoption worker will seek an appropriate adoptive family, prepare the child for adoption, match the child and family, and supervise the adoptive placement until the adoption is finalized.
5. Post-adoption supervision will be provided to adoptive families seeking such service in order to preserve and/or prevent disruption of the adoption.

Supportive agency services will be developed to enable the adoptive placement of children needing this service. These supports will include:

1. A statewide adoption exchange system
2. A system which assures placing all special needs children for whom no in-state placement has been identified on regional and/or national exchange networks which indicate their availability for adoption and provides a national search for an adoptive home.
3. A comprehensive media plan for the ongoing recruitment of adoptive families with state staff assigned to implement the plan.
4. A recruitment and training program designed for all potential adoptive families which is efficient and timely in approving the adoptive homes.
5. Develop a monitoring system for all children freed for adoption which is designed to assure that no child waits

longer than 12 months for an adoptive home.

6. All adoptive applicants will be informed of the procedures and resources necessary and available for adoption subsidies for children in the state system.

7. Legal services will be provided by the state to assist the staff and families adopting a foster child in processing court actions necessary to finalize adoptions.

The outcomes expected from an efficient and timely adoption program include:

1. Effecting permanent placements for children as early as possible following foster care placement through thorough assessment, case planning, timely decision-making and periodic review of progress to assure that children and families move through the system in a timely manner;
2. Reduced "drift" in foster care;
3. Cost-savings to the state by moving children out of the system; and
4. Enabling children to receive care in an environment with consistency and permanency in their formative years to allow for growth and development into healthy, productive adults.

The determination of workloads in the adoption service should consider time for completion of intake; assessment and preparation of the child; assessment and preparation of adoptive applicants; matching and supervising the child in the adoptive family; and post-placement and post-legal adoptive services.

National child welfare standards of practice indicate adoption workloads should be specialized as follows: staff working with younger children under 8 years of age should have no more than 20 active cases and workers with older special needs children should carry no more than 10 to 12 active cases. Adoption workers will be MSW staff who receive specialized training in adoption practice.

To enhance and improve the adoption practice within the agency, the agency will make available to the professional staff the assistance of nationally recognized adoption consultants.

***13 D. Establishment of Transfer of Custody**

1. Agency program staff shall consult with agency legal

staff on design of a service system for establishment of transfer of custody for foster children in relative placements in order to effect permanent placements. Program development will include assessing the feasibility of implementing a transfer system including receptivity of the courts, provision of legal services, fees for services, referral packets, policy and payment mechanisms.

2. Every relative placement for a foster child shall be reviewed at the regularly scheduled six month review and an assessment made as to whether lack of establishment of transfer of custody is a barrier to a permanent substitute placement for the child.

3. In those cases in which the relative and the child desire the establishment of transfer of custody and do not have the financial resources for the requisite legal services, those services shall be provided by the agency.

4. In each subsequent six month review hearing for the child in relative placement, such a determination shall be made, unless return home, adoption, or independent living is the permanent plan for the child.

E. Plan for the Recruitment of Foster and Adoptive Families

Recruitment, screening, training, supervision and monitoring of the required family resources necessary to meet the needs of foster children in the state system is a specialized function of a homefinding unit within the child welfare system. Therefore, to assure that a variety of specialized temporary and permanent families are secured for all children in and coming into the system, the agency will take the following actions:

1. A statewide recruitment plan will be developed and include resources for mass public media publicity aimed at securing a pool of potential foster and adoptive families.

2. Following the development of the plan, state staff will implement a screening process for all potential applicants.

3. Following the screening of applicants, orientation training will be conducted for all families prior to the placement of any child except for the emergency circumstances provided in state law and within 3 months of the applicant's initial inquiry into the program.

4. State homefinding staff will monitor and supervise the performance of all families on a regular basis using professionally developed criteria.

5. Homefinding staff will develop and operate an ongoing recruitment campaign on a statewide basis to add to the pool of family resources.

6. Homefinders will screen and train new applicants on an ongoing basis year round.

7. Homefinders will develop and implement screening and review mechanisms to assure that inappropriate foster or adoptive families are not approved and/or are removed from the program through professionally defined criteria.

8. The newly established state homefinding unit will look at all aspects of this service including existing functions and make any recommendations concerning necessary changes in the agency program. The agency professionals will have resources available to seek consultation from an expert in the field, if necessary.

II. COMPREHENSIVE TRAINING PLAN

*14 A. The agency will design and implement and consistently provide an orientation program for all new workers (no less than 32 hours) which consists—but is not limited to—the following content:

1. Role and responsibility of professionals in public child welfare
2. Child growth and development
3. Interventions with families: philosophy and purpose
4. Interviewing skills and techniques
5. Intent and mandates of P.L. 96–272
6. Overview of the continuum of agency services
7. Case planning

B. All employees shall receive individualized on-the-job training and formal classroom training prior to exercising responsibility for cases. The completion of the agency's required formal training may be delayed on an emergency basis if the unavailability of these employees pending such training would result in the agency's inability to meet the needs of abused or neglected children or to satisfy legal mandates, provided that the required formalized classroom training may not be delayed beyond sixty days.

The agency shall design and implement a minimum of

seven specialized curricula for in-service training to be provided within six months of employee assignment for no less than 32 hours of instruction. The areas of specialization shall include but not be limited to:

1. Intensive family services, values, skills, and knowledge geared toward preservation of families in which a child is at risk of placement
2. Home-based family services
3. Intake and crisis intervention including child risk assessment and family assessment
4. Foster family care services
5. Specialized adoption programming
6. Foster and adoptive homefinding services
7. Manager/Supervisor training: function and process

C. Each specialized curricula will be delivered to all current staff (including supervisors and program specialists) assigned to each service area.

D. All staff will attend staff development activities appropriate to their work assignment annually at the rate of no less than 32 hours per year either provided by the agency or offered outside the agency.

E. The foster parent training program shall include the following:

1. A minimum of 20 hours of orientation required of all prospective foster parents consisting of at least the following content:

- a. What is Foster Parenting?
- b. The Foster Child in your Home
- c. The Child's Natural Parents
- d. Working with the Agency
- e. Foster Parents as Team Members with the Agency and the Community
- f. Placement
- g. Legal Aspects of Working with Foster Children
- h. Preparing Children for Return Home and/or Adoption

2. Ongoing in-service Specialized Education required of foster parents. The state will design and implement specialized in-service educational programs to be offered at least annually in at least the following areas to foster parents serving children with these characteristics:

a. Foster Parenting Adolescents—minimum of 15 hours per year

*15 b. Foster Parenting Children with Special Physical Needs—15 hours per year

c. Foster Parenting Children with Emotional Problems—15 hours per year

3. In addition, the state will design and implement similar orientation and specialized education required of prospective adoptive parents of children to be offered during the homestudy process. Following placement of a special needs child, adoptive parents will be offered the specialized annual training provided to foster parents.

4. The state will develop, provide, and require ongoing educational sessions for the family service aides and transportation aides that include an orientation and a minimum of 8 hours of education every six (6) months. The content will include, but not be limited to:

a. Child care; i.e., child growth and development

b. Family relationships; i.e., effects of deprivation, separation

c. Home management, meal planning, housekeeping, budgeting, etc.

d. Services of social agencies and other community services

e. Role of family aide and/or transportation aide as agency team member

III. SYSTEMIC REORGANIZATION: MANAGEMENT AND ADMINISTRATION

A. Uniform Case Records

A statewide uniform case record system is essential if real coordination, communication and consistent service is to be provided to families and children in Louisiana. The uniform records needs to be designed to provide for monitoring of case progress. Therefore, it is agreed that a total system review of all records will be completed to

assure compliance with a uniform format designed by the system for all case records. Case record content will provide a means by which the history of every child, the location of the child, the services needed and the services provided to every child and his/her family can be determined.

B. Management Information System

The agency computerized tracking system should provide a means by which every child can be located and followed through the continuum of agency services. The computerized tracking system will provide for generation of reports providing information on progress made toward client goal achievement and services needed for children and families to assure movement through the system in a timely fashion.

C. Fiscal Management

Fiscal enhancement requires that the agency capture all federal dollars available for the provision of mandated child welfare services. Therefore, maximum effort and priority must be given to pursuing federal funding and reimbursement. Toward this end the administration of the agency will review every quarter the results of federal funds earned, paid and owed to Louisiana and new funds or reallocated funds available from federal initiatives. Service enhancement through reallocation of current funds necessary to capture federal funds will be given consideration and if feasible additional federal funds or freed-up state funds within the agency's budget will be applied to avoid foster care placement, reunify families, effect permanent substitute placements or to provide more timely services to children in foster care.

*16 In addition the agency will work collaboratively with external organizations, such as universities and private agencies to secure demonstration and research federal funds in their efforts to expand and enhance programs.

Fiscal management requires coalition and collaborative efforts to assure fiscal responsibility and effective use of limited resources. Therefore, the agency will review its fiscal operations and assign staff to continually review the growth and/or status of funds.

Finally, all purchase of service contracts in the children and family service programs will be reviewed on an annual basis to evaluate program effectiveness and cost effectiveness. Specific and adequate monitoring and accountability standards will be developed and implemented with service providers. Where necessary, due to noncompliance with contract provisions or

unsatisfactory monitoring findings, providers will be terminated from agency contracts.

IV. CHILD SPECIFIC, FAMILY FOCUSED PROGRAMMING

In order to assure that families and children receive the services necessary to meet their needs, the following continuum of services and activities will be implemented or enhanced by the agency:

A. Service programs will be developed, enhanced, and provided as needed to prevent the unnecessary placement of children into state care.

B. To assure that permanent planning occurs for individual children the agency will develop a written case plan and case review system which is designed to achieve placement in the least restrictive setting and in close proximity to parents, for each child in care in accordance with current agency foster care policy.

C. Children and families will receive services identified in the case plan and case review system as necessary to return the child home or effect a permanent placement for the child.

D. The system will insure that procedural safeguards are provided to all parents and children involved in the state agency system.

E. Service programs will be developed, enhanced, and provided as needed which assure that children will be

reunited with their families when this action is in the best interest of the child. If a plan of return home is proposed for a child after the child has been in care over 18 months, the plan must be documented in the record that the parent is in frequent and continuous contact with the child, is availing himself/herself of services necessary to enable the child to return home, and that return home can be reasonably expected within six months.

F. Every child who is eligible for permanency through adoption will be reviewed for adoption assistance. Every child who is eligible for permanency through transfer of custody shall be reviewed for legal assistance.

G. Long-term foster care as the permanent plan will be recommended by the agency only when return home, adoption, transfer of custody, or independent living for older adolescents (age 16 or over) is not possible after every effort has been made to provide permanency through reunification and/or other above identified permanent plans.

*17 H. A permanent plan will be recommended to the court exercising juvenile jurisdiction on all foster children within eighteen months of placement into care.

All Citations

Not Reported in F.Supp., 1990 WL 6035

Footnotes

- 1 The named plaintiffs are:
 - 1) Del A by his next friend Nat Lacour; 2) Brendolyn A by her next friend Dr. Stephen Hales; 3) Chris B by his next friend Maureen O'Connell; 4) Stacey C by her next friend Brenda Erwin; 5) Stephanie C by her next friend Rabbi Murray Blackman; 6) Windy D by her next friend Dr. George Sterne; 7) Kieta D by her next friend Dean Thomas Sponsler; 8) Leroy E by his next friend Dr. Viola King; 9) Chantell F, 10) Sandra F, 11) La Donna F, and 12) Thomas F by their next friend Michael Mielke; 13) Flemming G by his next friend Phyllis LeFeaux; 14) January H, and 15) Dollie H by their next friends Bruce and Colleen Temple.
- 2 The defendants are Charles "Buddy" Roemer, Governor of the State of Louisiana; May Nelson, Secretary of the Louisiana Department of Social Services; and Brenda Kelley, Assistant Secretary of the Louisiana Department of Social Services. Pursuant to Fed.R.Civ.Pro. 25(d), these defendants were automatically substituted as parties when the prior defendants ceased to hold office.
- 3 The State has been subjected to four reviews by the U.S. Department of Health and Human Services. These reviews measure compliance with 96-272 based upon a random sample of cases statewide. The State failed its first review in fiscal year 1983. The State passed three subsequent reviews in fiscal years 1984, 1986, and 1989, achieving compliance rates of better than 66%, 80%, and 90%, respectively. The next review will be conducted in 1992.
- 4 The State acknowledges that it has now received the full amount of congressional appropriation it is entitled to under 96-272 up through fiscal year 1989 (through October 1, 1989).

5 Del A, Brendolyn A, and Flemming G.

6 Plaintiffs designated Dr. Jeanne M. Hunzeker, Associate Dean of the School of Social Work, Southern University at New Orleans, as their expert. Defendants designated Brenda Kelley, Assistant Secretary of the Louisiana Department of Social Services, as their expert.

7 P.L. 96-272 amended the federal Child welfare Services program and established a federal Foster Care and Adoption Assistance program. These programs are set forth, respectively, in Title IV-B (42 U.S.C. §§ 620-28) and IV-E (42 U.S.C. §§ 670-76) of the Social Security Act.

Title IV-B provides funds to develop preventive and reunification services and to improve planning and case review for foster children and their parents. In order to receive additional federal funds under Title IV-B, a state must have a child welfare system which assures for all children in state supervised care, including case plans for each child, periodic case reviews, an inventory, an information system, and a service program to reunite children with their families. *See* 42 U.S.C. §§ 620-28; Allen, Golubock, & Olson, *A Guide to the Adoption Assistance and Child Welfare Act of 1980*, in *Foster Children in the Courts* 579 (M. Hardin ed. 1983) [hereinafter *Foster Children in the Courts*].

Title IV-E provides funds for the maintenance of children in foster care or in adoptive families. Title IV-E also provides reimbursement funds for children placed in foster care. In order to receive funds under Title IV-E, a state must have a plan which meets the requirements of Title IV-E as set forth in 42 U.S.C. §§ 671(a) and 675. Among other things, the plan must provide for individual case plans and periodic case reviews for children in foster care, and must provide that reasonable efforts will be made in each case a) to prevent or eliminate the need for removal of the child from his home prior to placement in foster care, and b) to make it possible for the child to return to his home. *See* 42 U.S.C. §§ 670-76; *Foster Children in the Courts* 579-80.

8 *See* Plaintiffs' Response to Order to Show Cause dated November 6, 1989.

9 Plaintiffs also requested the following modifications: 1) section IV(B) of the Plan (Child Specific, Family Focused Programming) should specifically refer to the State's Foster Care Program Policy Manual, sections 6-510 through 6-545 (dealing with requirements for children in foster care, including case plans); 2) the Plan should, in addition to ensuring that the State make reasonable efforts to return children to their homes (section IV(C)), ensure that the State make reasonable efforts to *prevent* placement of children in foster care; and 3) the Plan should provide for appropriate medical care to children in foster care.

Because 96-272 contains specific requirements with respect to children in foster care, *see* 42 U.S.C. §§ 671(a)(16), 675(1), (5)(B), (6); 45 C.F.R. § 1356.21(d)(2), and because the Plan is to be implemented in accordance with these requirements, I see no need to discuss plaintiffs' objections as to requirements for children in foster care. Further, as the Plan does require that the State make reasonable efforts to prevent placement of children in foster care (section I(A)(2)) and that children in foster care will receive adequate medical care (section I(B)(7)), I confine myself to a discussion of the objections concerning caseload limits, timelines, and case worker training.

10 On several occasions during the revision process, plaintiffs argued that the State's own policy manuals attest to the validity of plaintiffs' objections. *See, e.g.*, Plaintiff's Response to Order to Show Cause at 9-12. Plaintiffs do not specifically contend in their objections that these policy manuals create property interests to which plaintiffs have a legitimate claim of entitlement, but the argument nonetheless has the flavor of a procedural due process claim as recognized in *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972). Even if the policy manuals do create property interests to which plaintiffs have a legitimate claim of entitlement, *see Taylor v. Ledbetter*, 818 F.2d 791, 798-800 (11th Cir.1987), *cert. denied*, 109 S.Ct. 1337 (1989), I cannot order defendants to provide the benefits available under state law. *Pennhurst*, 465 U.S. at 106, 104 S.Ct. at 911. Rather, I can only order defendants to provide procedural protection of these benefits to ensure that the benefits are not denied without due process of law. *See Taylor*, 818 F.2d at 822 (Tjoflat, J., dissenting).

11 Section I(A)(1) (Child Protective Services) provides, in relevant part:

National child welfare standards adopted in 1988 indicate workers in child protective services should carry no more than 10 to 12 new cases per month and should not exceed a combined caseload of 16 new and ongoing cases per month.

Section I(A)(2) (Family Based Services) provides, in relevant part:

National child welfare standards suggest staff should be well-trained child welfare practitioners (Bachelor's degrees and Master of Social Work degrees) with a case load of 18 to 20 families in a one month period and carry the family for 3 to 6 months of service.

Section I(B)(4) (Foster Family Care) provides, in relevant part:

Foster family care workers will be assigned workloads that reflect a differentiated caseload which reflects the individual needs of the children served. Workers with children placed in regular foster families will be assigned no more than 20 to 25 children and their families and whatever number of foster homes that entails. Workers with children with special needs will be assigned no more than 15 to 20 children, their families and whatever number of specialized foster families that entails.

Section I(C) (Permanent Substitute Services: Adoption) provides, in relevant part:

National child welfare standards of practice indicate adoption workloads should be specialized as follows: staff working with younger children under 8 years of age should have no more than 20 active cases and workers with older special needs children should carry no more than 10 to 12 active cases.

12 42 U.S.C. § 671(a)(15).

13 *See* 42 U.S.C. § 671(a)(15)(A). *See also* National Council of Juvenile and Family Court Judges, *Public Law 96-272: Reasonable Efforts Protocol—Agency Protocol 1-3*, 29 (Aug. 1986 Draft) [hereinafter *Reasonable Efforts Protocol*].

14 *See* 42 U.S.C. § 671(a)(15).

15 *See* 42 U.S.C. § 671(a)(15)(B).

16 This does not preclude plaintiffs from seeking appropriate relief at some point in the future should the violations continue under the Plan.

17 Former section 4-510(B) (1986) provides that contact with the victim and the parent shall be made within: 1) 24 hours in emergency situations; 2) 48 hours in high priority situations; and 3) a period not to exceed 5 days in non-emergency situations.

18 Former section 4-525 (1986) provides for timelines for completing contacts with adults and children involved in investigations of abuse or neglect, assessing the risk faced by the child in the present environment, completing collateral contacts, and completing investigations.

19 Of course, investigations of abuse or neglect of children in foster care will occur as directed in Plan sections I(A)(1), which specifically incorporates Foster Care Program Policy Manual Chapter 4, Part 12 (mandatory timelines for response to allegations of abuse or neglect classified as emergency or high priority, and for preparation and completion of reports); and I(B)(6), which specifically incorporates Foster Care Program Policy Manual Chapter 6, Part 6, section 655 (mandatory timelines for investigating and completing reports).

20 *See* 42 U.S.C. § 675(1), (5)(B), (6); 45 C.F.R. § 1356.21(d)(2).

21 In general, 42 U.S.C. § 5106(b) provides that in order to receive federal funds under this section, a State must have in effect a law providing for, *inter alia*, the reporting of child abuse, prompt investigations, and medical and legal responses to cases involving medical neglect.

22 This does not preclude plaintiffs from seeking appropriate relief at some point in the future should the violations continue under the Plan.