

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSEPH and JOSEPHINE A., by their
next friend, CORRINE WOLFE, et al.,

Plaintiffs,

vs.

No. 80-623 JC/DJS

MARY-DALE BOLSON in her official
capacity, et al.,

Defendants.

REVISED STIPULATED EXIT PLAN

This matter having come before the Court on the stipulation of the parties, the Court hereby vacates the Stipulated Exit Plan dated February 25, 1998 and substitutes for that Order this Revised Stipulated Exit Plan (the Revised SEP) as an Order of the Court. Defendants have the right to seek exit from the sections of this Exit Plan under the terms set forth in Section VIII.B. of this Revised SEP. The provisions of this Exit Plan are enforceable.

Preamble

Whereas, the Secretary of the Children, Youth and Families Department (CYFD) has acknowledged that children in the custody of CYFD have rights to fair, reasonable and timely decision-making with regard to access to adoption and to fair, reasonable and adequate procedures and practices necessary to ensure access to permanent adoptive families.

Whereas, the parties acknowledge that improvements have been made as a result of this lawsuit and that it is in the interests of the parties to agree to a specific, demonstrable process for a step-by-step exit from this suit.

I. Purpose

The Secretary (Secretary) of the Children, Youth and Families Department and the plaintiff class of children in CYFD custody share the goal of moving children who have the permanency goal of adoption or

should have such a goal into permanent living situations as quickly as possible. In order to aggressively explore options for children with goals of adoption awaiting placements or adoption finalization, the Secretary will cause CYFD to perform the following functions.

This Revised SEP is an enforceable plan for the Secretary to take aggressive measures to achieve this objective. The parties intend that this Revised SEP replace the current SEP entered as an Order of the Court on February 25, 1998.

II. The ART Review Process in General

CYFD will independently contract with at least two expert consultants to staff at least two "Adoption Resource Teams" or "ART" teams, each consisting of one external expert and one CYFD team member. The purpose of the ART teams is to bring accountability, attention, available resources and stability to the issue of moving children through their individual barriers to adoption, and speeding the adoption process.

A. The parties will mutually agree to the external ART members. It is the intent of the parties that the two expert consultants will live in New Mexico during the terms of their contracts.

B. Implementation Plan: The ART, CYFD and plaintiffs will adopt a plan to implement this agreement. In that plan they will address which cases to review first, scheduling and other procedural issues. It is the intent of the parties that oldest cases be given priority.

C. As controlled by Sections II through VII of this Revised SEP, the ART will, as applicable, review, amend and approve, in an Individualized Adoption Plan (IAP), specific recruitment steps to place the child in an adoptive or pre-adoptive home, as appropriate, or develop other steps intended to achieve adoptions more quickly for those children whose plan is adoption. The ART will work with CYFD workers, their supervisors and adoption consultants to ensure the steps developed will be implemented. In the event an ART expert consultant and a CYFD ART member do not agree on action to be taken, the ART expert consultant will be the final arbiter.

D. Because of geographic and scheduling concerns, meetings may be by telephone if approved by the ART team. The expectation is that, especially for the larger offices, the ART team meetings will be in person when practicable.

E. Each time an ART team meets on a child's case for the first time, the team will meet with those individuals in CYFD who carry and supervise the child's case, and, except for those cases in Section VIB, VIIA, B and C (below), with the adoption consultant who is responsible for recruitment, as well as anyone else the ART team deems necessary. For each subsequent meeting, the ART team will determine who is required to attend the meeting. Meetings may be by telephone only if approved by the ART team.

F. Conflicts and Rescheduling: Notwithstanding the foregoing, the parties recognize that at times required participants may be unavailable for an ART meeting because of emergencies or scheduling conflicts. If non-attendance by a person the ART team deems necessary for a meeting is due to an emergency or scheduling conflict, a rescheduled meeting must take place within 15 calendar days.

G. Tracking: The ART or CYFD will track the cases that come into ART in a basic computerized spreadsheet that CYFD provides and is developed with and approved by the ART expert consultants. The ART meetings shall occur every 60 days on each case to identify progress, as set forth in the sections below, unless the ART decides to postpone a meeting because of a scheduled event, that postponement is documented by the ART, and the meeting is rescheduled to take place within 15 calendar days. The initial meeting shall occur no later than 60 days after referral to ART. In particular cases that require it, the ART can schedule meetings more frequently. Those required to attend ART meetings are defined in the sections below.

H. Documentation: CYFD workers will document the steps taken to implement the IAPs and the IAPs will be updated to reflect what is decided at each meeting and the spreadsheet or FACTS will reflect these changes. However, while modifications and additions must be memorialized in the IAPs, prior language will not be deleted.

III. ART Review of The Assessment and Initial Placement Process

A. To ensure that placement considerations include factoring in the likelihood of a child's goal at some point becoming adoption, the Department has identified a screening tool that identifies children for concurrent planning so that workers can take this factor into consideration in placement decisions. A copy of the tool is attached and is part of the concurrent planning process that was adapted from Concurrent Planning: From Permanency Planning to Permanency

Action, Courtwise and Preparing Permanency Planning for Foster Parents, by Linda Katz. The tool is approved by Plaintiffs and the CYFD Secretary. CYFD will begin utilizing the tool statewide before monitoring of this Agreement begins.

B. Within 30 days of a child entering custody, Child Protective Services (CPS) consultants will attend or participate by telephone in a conference with the CYFD worker or his/her supervisor and utilize the tool at that conference for the purpose of determining whether the child is a candidate for concurrent planning and that the concurrent plan is adoption.

D. If, after utilizing the screening tool at this conference, it is determined that a child is a candidate for concurrent planning and the concurrent plan is adoption, then the child will be placed in a concurrent planning home that signs an Intent to Adopt Agreement within 120 days of custody. If no such placement is made (and agreement signed within that timeframe), then the case will be referred to the ART within 5 working days for a timely conference.

E. In the event a case is referred to ART pursuant to §III.D, at the ART meeting, the ART and the persons the ART requires to be at the meeting will review the child's placement and prepare or amend an individualized adoption recruitment plan for placing a child in a potential adoptive home.

F. For any child whose case is in the ART Review Process through this means, the child's case will be removed from the ART Review Process if and when the ART team has determined that the child has been placed in a potential adoptive home. This will not preclude additional ART review of a child's case should any such child fall into any category enumerated below that would require such a review.

G. If the ART recommends a change in the child's placement and the CYFD worker disagrees with moving the child, the placement decision will be made, in writing, by the Secretary or the Deputy Secretary, utilizing all available information.

H. Each ART meeting will include a finding on progress on the IAP. The reasons for the finding will be discussed with the staff involved and documented in writing at the meeting.

I. Nothing in Section III will interfere with CYFD's reasonable efforts to return a child who has a permanency goal of return home.

J. The Neutral Third Party will monitor that the screening tool is used and will monitor CYFD's compliance with the activities set for these cases.

IV. ART Review of Cases with a Plan Change to Adoption

A. The case of every child whose plan changes to adoption (dated from when the internal goal was changed to adoption or the date the court orders that the goal be changed to adoption, whichever is earlier), will be referred to the ART to review, amend and approve the IAP with the adoption consultant. The referral to ART will be triggered by the date of the initial plan change in the FACTS window or by date of the Court order changing the plan to adoption, whichever is earlier. The referral will be made to ART within 30 days of the above event for a timely ART meeting.

B. For each child whose case is reviewed by the ART, the team will review, amend and approve an individualized adoption plan that identifies specific recruitment activities and barriers to placement in a potential adoptive home consistent with law. The ART shall meet thereafter with the same process and purposes as set forth above until the child is in a potential adoptive placement. When such a placement is made, the case will be removed from the ART unless it is re-referred under another section.

C. Each ART meeting will include a finding on progress on the IAP. The reasons for the finding will be discussed with the staff involved and documented in writing at the meeting.

V. ART Review of Cases with a Goal of Adoption for 12 Months or More

A. For children who have had a goal of adoption for 12 months or more (dated from when the internal goal was changed to adoption or the date the court orders that the goal be changed to adoption, whichever is earlier), the ART will conduct its meetings as set forth in Section 1. If cases in this category are not already in ART, referral will be made within 30 days of the above trigger date for a timely ART meeting.

B. For each child whose case is reviewed by the ART pursuant to §V.A, the team will review, amend and approve an individualized adoption plan that identifies specific recruitment activities and barriers to placement in a potential adoptive home consistent with law.

C. The ART shall meet thereafter with the same process and purposes as set forth above until the child is in a final adoptive

placement. When such a placement is made, the case will be removed from the ART unless it is re-referred under another section.

D. Each ART meeting will include a finding on progress on the IAP. The reasons for the finding will be discussed with the staff involved and documented in writing at the meeting.

VI. ART Review of Cases Whose Adoptive Placements Disrupt or For Whom the Adoption Has Not Been Finalized Within 12 Months of the Signed Placement Agreement

A. For children in adoptive placements, if a placement disrupts prior to finalization, the case is referred to ART with the same review process as in Section V unless the plan is changed. In that event, if the ART disagrees with the plan change, the case will be reviewed by the Secretary or Deputy Secretary within 30 days of the change of plan staffing and his/her decision will be final and documented in the case file.

B. For children in adoptive placements where the adoption has not been finalized within 12 months of the signed placement agreement, the case will become part of the ART review process as in Section V.

VII. ART Review of Certain Reunification, Permanent Planned Living Arrangement (PPLA) Cases

A. Reunification Cases for Children in Custody 2 Years or More.

1. The cases of all children with a goal of reunification who have been in custody for two years or more will be reviewed by ART within 30 days of their two year custody date.

2. The ART team will meet with the child's worker or supervisor, the CPS consultant and any other person whose presence is required by the ART team and determine whether the plan should be changed to adoption.

3. IF the ART decides that a case reviewed pursuant to §VII.A.1 should be changed to adoption, a change of plan staffing shall occur within 30 days of the ART review. If the change of plan staffing accepts the ART recommendation to change the plan to adoption, within 30 days of the change of plan staffing CYFD will file a motion to change the plan.

4. If the change of plan staffing does not accept the ART recommendations, the case will be reviewed by the Secretary or Deputy

Secretary within 30 days of the change of plan staffing and his/her decision will be final and documented in the case file.

5. If the Secretary disagrees with the ART recommendation, then for as long as the child's goal remains reunification, the ART process set forth in Sections VIIA 2-4 will occur for that child's case every year.

6. If a change of plan is presented to the Court and rejected by the Court, its decision is final. If the change of plan is accepted by the Court, the case will be referred to the ART team within 5 working days as described in Sections IV and V above.

7. Cases will be referred to the ART process on the two year anniversary of the child's entering custody.

B. PPLA Cases.

1. All children in CYFD custody under 16 years of age who have a goal of PPLA shall have that goal reviewed and approved or disapproved by the ART.

2. If the ART recommends a goal change, a change of plan staffing shall occur within 30 days of the ART meeting.

3. If the change of plan staffing accepts the ART recommendation to change the plan to adoption, within 30 days of the change of plan staffing CYFD will file a motion to change the plan.

4. If the change of plan staffing does not accept the ART recommendation, the case will be reviewed by the Secretary or Deputy Secretary and his/her decision will be final and documented in the case file. However, in that instance, for as long as the child's goal remains PPLA, until the child reaches the age of 16, the ART Review Process will occur every year.

5. If a change of plan is presented to the Court, its decision is final and will no longer be reviewed by ART.

6. If the change of plan is accepted by the Court, the case will be referred to ART in accordance with Sections IV and V above.

C. Fit and Willing Relative -- If law or policy changes to allow CYFD to transfer legal custody of children to relatives or to allow discontinuance of foster care payments to relatives, CYFD will refer these

cases for ART review as in Section VII.B before presenting a plan of Fit and Willing Relative to the court.

VIII. Monitoring and Exit

A. Neutral Third Party.

1. A Neutral Third Party (NTP) will be selected by the parties.
2. Within 60 days of the signing of this Agreement, the NTP will prepare a monitoring plan to be approved by the parties.
3. The NTP will determine whether CYFD staff is appropriately conducting the activities set forth in the IAPs for each case reviewed by the ART. The NTP's monitoring plan will detail the manner in which the NTP will make his/her assessments and determinations, and the monitoring reports shall include the NTP's analyses and conclusions required to be made by this SEP.
4. In order to make his/her determinations, the NTP will review whatever information and documentation s/he deems appropriate, such as (a) any narratives or database entries setting forth the activities that occur between ART meetings and decisions made at ART meetings; and (b) the IAPs and their updates.
5. The NTP will also, at his/her discretion, interview ART team members, CYFD employees or anyone else the NTP deems appropriate to assist in his/her evaluations.
6. The NTP may attend ART meetings.
7. The NTP shall issue periodic reports detailing the results of his/her reviews and totaling the percentage of cases in each category in which CYFD staff is performing the required activities. The reports shall be issued in accordance with the monitoring plan.
8. For purposes of the objective measures in sections 7(A) and 7(B), all categories shall be combined in totaling percentages.
9. The NTP will also report on the assessment planning process and the referral system for ART review in the manner she deems appropriate.

10. The first NTP report will encompass the six month period beginning April 1, 2004 unless otherwise agreed by the parties.

B. Exit from the Revised SEP shall occur when:

(A) Ninety percent (90%) of the children who require an ART review in a reporting period shall receive that review. All cases taken from all categories requiring a review will be taken together to determine a single percentage of compliance. The first period measured shall be for six months and thereafter the periods shall be measured in quarters. Compliance with this section shall be declared when this percentage is reached through an average of three successive quarters. For purposes of determining exit for the first nine-month period, the six month percentage and the first quarter percentage will be averaged.

And,

(B) In 85% of the cases reviewed by the ART during the reporting period, CYFD has performed or reasonably attempted to perform the activities set forth by the ART's IAPs. All cases taken from all categories requiring a review will be taken together to determine a single percentage of compliance. The first period of measure shall be for six months, and thereafter the periods shall be measured in quarters. Compliance with this section shall be declared when this percentage is reached through an average of three successive quarters. For purposes of determining exit for the first nine-month period, the six month percentage and the first quarter percentage will be averaged.

And,

(C) CYFD meets the following outcomes intended to measure progress with the goals set forth in this Memorandum of Understanding:

- (i) CYFD will identify children as of December 1, 2003 who have had a goal of adoption for more than one year and who are not in a pre-adoptive home. CYFD will place 40% of those children in pre-adoptive homes; and,
- (ii) CYFD will identify the children as of December 1, 2003 who have a goal of adoption but who are not freed for adoption. 50% of those children will be freed for adoption.

Once compliance with (A), (B) have occurred simultaneously and (C) has been accomplished, CYFD will exit the SEP monitoring plan.

C. Monitoring Post-Exit ART Review Process. The CYFD Secretary agrees to keep the internal ART review process in place for at least one year after exit from Revised SEP monitoring. To that end, the expert ART consultants and their teams and staff will continue to operate in accordance with this Agreement for at least one year beyond CYFD's exit from monitoring of the Revised SEP. After exit of monitoring, the case will remain on the court's docket for the one-year period. If at any time during that year after exit the ART review process is dismantled in any way, the parties and the court agree that the plaintiffs may move to compel the Secretary to reinstitute the ART review process in its entirety for a term to be determined by the Court. The NTP shall remain active during this one year period for the sole purpose of determining that the ART process remains in place and shall have the ability to attend meetings and interview whomever the monitor deems necessary to perform this function. The contract amount for this one year period shall not exceed \$50,000.

D. Reevaluation of Outcome Measures. At any time nine months after implementation of the ART process, CYFD may convene a meeting with the plaintiffs, the expert consultants and the NTP to discuss in good faith the reasonableness of the above outcome measures and modification of outcome measure 7C(i). Plaintiffs and the Secretary may agree to modify the outcome measure or the universe to be measured.

IX. MISCELLANEOUS

A. Enforcement. This Revised Stipulated Exit Plan is enforceable in federal court.

B. Resources. It is the intent of the parties that, since this process narrows the scope of subject areas of the Stipulated Exit Plan, the Department will utilize very aggressive methods and attempt to bring new resources to concentrate on this category of children – children awaiting adoption – to move them through the system as quickly as possible. The Secretary agrees to supply adequate resources and staff to implement this MOU and the new SEP. Such resources may include but are not limited to:

- Increasing the number of adoption consultants;
- Attempting to subsidize more adoptions and bring more funds into the Department for child specific adoption recruitment;
- Others as may be agreed upon.

The Secretary commits to advocate to the Governor for resources she feels are necessary, but the parties recognize that as an employee of the executive branch, the Secretary is not obligated by this plan nor will she be obligated by the SEP to advocate contrary to the directions of the Governor, and the Governor's decision on legislative requests is final. The parties understand that the Secretary cannot obligate the Legislature to commit more resources to CYFD and that this Revised Stipulated Exit Plan does not do so. However, the Secretary agrees to make best efforts and exercise good faith in advocating for resources that may be necessary to accomplish the purposes of this Agreement.

C. CYFD will schedule meetings to comply with this Revised Stipulated Exit Plan and the ART teams requirements for particular cases.

D. Consultants. The consultant's contracts will provide for a back up when the consultant is unavailable for vacation or extended periods. If a meeting is not held because a consultant is not available it will not be counted against CYFD.

E. The parties agree that the processes defined by this MOU do not offend the principles of *Younger* or other abstention doctrines.

F. It is explicitly agreed that the reservation of defenses clause in Section VIII.C of the original SEP is not contained in this Revised SEP and is explicitly rescinded.

G. Definition of Appropriate – In deciding whether an act or plan is appropriate, the NTP shall not substitute his/her judgment for that of the ART expert consultant. "Appropriate" shall mean fair, reasonable and timely standards of professional, competent social work practice. Appropriate does not necessarily mean the best decision or best plan; a determination as to whether an action is appropriate must be viewed as of the time of the action and shall not be affected by hindsight.

For Plaintiffs:

For Defendants:

Marcia Robinson Lowry
Susan Lambiase
Children's Rights

Timothy V. Flynn-O'Brien
Bryan & Flynn-O'Brien

Robert D. Levy
Geer, Wissel & Levy

APPROVED AND ADOPTED AS AN ORDER OF THE COURT:

John E. Conway
Chief United States District Judge

Dated: _____