

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

**CASSIE M., by Next Friend Kymberli Irons;)
ALEX and JARED C., by Next Friend)
Gregory C. Elliott; TERRENCE T., by Next)
Friend Gregory C. Elliott; TRACY L., by)
Next Friend Kymberli Irons; DAVID T., by)
Next Friend Mary Melvin; and DANNY B.,)
by Next Friend Gregory C. Elliott; for)
themselves and those similarly situated*,)**

Plaintiffs,

v.

**LINCOLN D. CHAFEE, in his official)
capacity as Governor of the State of Rhode)
Island; STEVEN M. COSTANTINO, in his)
official capacity as Secretary of the)
Executive Office of Health & Human)
Services; and JANICE E. DEFRANCES, in)
her official capacity as Director of the)
Department of Children, Youth & Families,)**

Defendants.

**Class Action
Civil Action No. 1:07-cv-00241-ML-LDA**

SECOND AMENDED COMPLAINT
FOR INJUNCTIVE AND DECLARATORY RELIEF
AND REQUEST FOR CLASS ACTION

* pseudonyms are used for all minor named plaintiffs.

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I. Introduction

1. On October 31, 2004, a three-year-old Rhode Island boy named T.J. Wright was beaten to death by his foster parents. The State of Rhode Island's Department of Children, Youth and Families (DCYF), the agency responsible for protecting abused and neglected Rhode Island Children, had removed T.J. from his parents' care and placed him with the foster parents who killed him: a twenty-year-old maternal aunt and her live-in boyfriend who already had two young children. DCYF placed T.J. and his two brothers with these young parents without screening or licensing them. There were now five children living in the home, all under the age of nine. Both foster parents had histories of drug abuse and involvement in drug trafficking. Both were unemployed.

2. T.J. Wright's death was all the more tragic because DCYF could easily have prevented it by taking simple steps, mandated under DCYF's own policies, to ensure T.J.'s safety before placing him in their care, such as screening the prospective foster parents for criminal and DCYF histories and checking their references. DCYF had a duty to protect T.J. Wright. Instead, it placed him with the people who killed him.

3. The T.J. Wright homicide put DCYF in the spotlight, revealing serious systemic failures. An official investigation into his death produced a series of urgent recommendations for long-overdue reform. Nevertheless, now nearly three years since T.J.'s death, DCYF is still unable to provide basic safety for the abused and neglected children whom it removes from home and takes into its legal custody for their own protection.

4. This civil rights class action is brought on behalf of those vulnerable children. Plaintiffs seek declaratory and injunctive relief to remedy Defendants' violations of

their legal rights and to prevent Defendants, by their actions and inactions, from continuing to harm the abused and neglected children who rely on Defendants for care and protection.

5. DCYF is plagued by fundamental, systemic failings of great depth and scope. For example:

- **DCYF fails to protect children from abuse and neglect in foster care:**
 - In five of the six years from 2000 through 2005, Rhode Island was the worst state in the nation in its rate of maltreatment or neglect occurring to children in State foster care.¹
 - For years, children under the protection of the state in foster care custody in Rhode Island have suffered abuse or neglect at a higher rate than have children living in the state's general population.
- **DCYF fails to assess and address children's needs and fails to place them with families where their needs will be met and where they will be safe:** In all aspects of case planning and management, DCYF fails to exercise reasonable professional judgment. DCYF fails to identify children's safety, medical, mental health, education and permanency needs and fails to develop and implement plans to ensure that children and families receive necessary services to meet those needs. DCYF does not develop case plans or choose placements for children on the basis of their individual situation. DCYF regularly places children in settings that are ill-suited to their individual needs. As a result, these placements predictably disrupt, and DCYF shuffles children unnecessarily from one placement to another. With each successive inappropriate placement, children become increasingly damaged.
- **DCYF returns children to their parents without making a reasoned determination that the children will be safe and without identifying or providing services needed to ensure the children's safety:** More than 15 percent of the children entering Rhode Island foster care in the first quarter of 2006 had been in foster care less than a year earlier. This means that these children had been returned by the State to their parents, only to be abused or neglected again and returned to State foster care.
- **DCYF fails to engage in the planning necessary for children in its care to achieve permanency, causing many children to languish in foster care for years:** DCYF fails to timely plan for adoption when children cannot be safely returned home. DCYF frequently places children in institutions and with families that will not adopt. For children who cannot be reunified with their

¹ Data on 2006 are not yet available.

families, this effectively keeps children languishing in care with no move towards finding a permanent home.

- **DCYF fails to maintain an adequate number of foster homes, instead placing and leaving children in institutions simply because nothing else is available:** Federal law and reasonable professional standards require that children in foster care be placed in the least restrictive, most family-like setting suited to their needs. In Rhode Island, however, 35 percent to 40 percent of the children in State foster care custody live in expensive emergency shelters, group homes, and other institutions, many simply because Rhode Island has not developed more appropriate and less harmful placements for them. The rate at which Rhode Island institutionalizes children in its foster care custody is twice the national average of 19 percent. In the most recent year for which data are available, 2004, Defendants placed 18.9 percent of children in foster care under 12 years old in group homes and institutions; this is more than twice the national median of 8.3 percent in 2003, the last period for which data are available. Such placements are harmful, especially to young children, except in very rare cases.
- **DCYF assigns excessive caseloads to its caseworkers, making it impossible for them to visit the children in DCYF's custody:** DCYF caseworkers labor under caseloads that far exceed reasonable professional standards. As a result, caseworkers make only a fraction of required visits with the children assigned to them. As of June 2007, only 39 percent of all Plaintiff Children had received a face-to-face visit with their caseworker within the last 30 days. Without caseworkers visiting children on a regular basis, it is impossible for DCYF to ensure that children in foster care are safe and are having their basic needs met.
- **DCYF places children in unlicensed homes:** As of May 2007, there were 233 children in DCYF's legal custody who were living in unlicensed foster homes. DCYF did not take reasonably necessary steps to ensure that these homes were safe and appropriate placements before leaving children in them.

6. These harms to children are the direct result of a child welfare system that has long been poorly managed, that misdirects funds, and that has failed to develop necessary and appropriate placements and services for children.

7. This civil rights class action seeks declaratory and injunctive relief to compel Defendants—the Governor of the State of Rhode Island, the Secretary of the Executive Office of Health and Human Services, and the Director of the Department of Children, Youth

and Families—to meet their legal obligations to care for and protect Rhode Island’s abused and neglected children in state custody by reforming the State’s dysfunctional child welfare system.

II. Jurisdiction and Venue

8. This action is brought pursuant to 42 U.S.C. § 1983 to redress violations of the United States Constitution, federal statutes, and federal common law. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

9. Venue is proper here pursuant to 28 U.S.C. § 1391(b). The claims arise in this district.

III. Class Action Allegations

10. This action is properly maintained as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

11. The class is defined as “all children who are or will be in the legal custody of the Rhode Island Department of Children, Youth and Families due to a report or suspicion of abuse or neglect” (“Plaintiff Children”). As of January 2007, approximately 3,000 children were in the legal custody of DCYF for foster care services due to reported or substantiated allegations of abuse or neglect. The Class is sufficiently numerous to make individual joinder impracticable.

12. The questions of law and fact raised by the Named Plaintiffs’ claims are common to and typical of those of the Plaintiff Children they seek to represent. Named Plaintiffs are all children in Defendants’ legal custody who rely on Defendants for their safety and well-being. They are at risk of harm by the systemic and legal deficiencies of Rhode Island’s child welfare system.

13. Questions of fact common to the Class include:
 - a. Whether Defendants fail to provide Plaintiff Children with safe, appropriate, and stable foster care placements, causing significant harm to their health and well-being;
 - b. Whether Defendants fail to prevent the abuse or neglect of Plaintiff Children while in Defendants' custody, causing significant harm to their health and well-being;
 - c. Whether Defendants fail to place Plaintiff Children in the least restrictive and most family-like settings suited to their needs, including by unnecessarily institutionalizing them, causing significant harm to their health and well-being;
 - d. Whether Defendants fail to provide Plaintiff Children with legally required services necessary to keep them safe and properly cared for, and to prevent them from deteriorating physically, psychologically, or otherwise while in custody, as required by law and reasonable professional judgment, causing significant harm to their health and well-being;
 - e. Whether Defendants unsafely return Plaintiff Children to caretakers who abuse or neglect them again, causing significant harm to their health and well-being;
 - f. Whether Defendants unnecessarily move Plaintiff Children from placement to placement, causing significant harm to their health and well-being;
 - g. Whether Defendants fail to provide Plaintiff Children and their families with reasonable decision-making as well as timely services necessary to ensure the safe and successful reunification of children with their families when appropriate, causing significant harm to their health and well-being;
 - h. Whether Defendants fail to provide Plaintiff Children with timely and reasonable decision-making as well as services necessary to ensure that when Plaintiff Children cannot be reunited with their families safely, they are promptly freed for adoption and placed in permanent homes, causing significant harm to their health and well-being; and
 - i. Whether Defendants fail to provide Plaintiff Children with the supports necessary to maintain family relationships where appropriate, including placing siblings together as well as

providing parent and sibling visits, causing significant harm to their health and well-being.

14. Questions of law common to the Class include:

- a. Whether Defendants' actions and inactions violate Plaintiff Children's substantive due process rights to be free from harm while in state custody, guaranteed by the Fourteenth Amendment to the United States Constitution;
- b. Whether Defendants' actions and inactions violate Plaintiff Children's rights to family integrity, guaranteed by the First, Ninth, and Fourteenth Amendments to the United States Constitution; and
- c. Whether Defendants' actions and inactions violate Plaintiff Children's rights to timely case plans containing mandated elements and to adequate foster care maintenance payments, established by the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, and relevant federal regulations.

15. Named Plaintiffs will fairly and adequately protect the interests of the class they seek to represent.

16. Named Plaintiffs and Plaintiff Children are represented by:

- a. Jametta O. Alston, a licensed Rhode Island attorney and the former Child Advocate of the State of Rhode Island, a public official empowered to bring legal action to protect abused and neglected children in DCYF's care;
- b. John Dineen, a licensed Rhode Island attorney with substantial experience litigating civil rights matters in the federal courts;
- c. Attorneys employed by Children's Rights, a nonprofit legal organization whose attorneys have substantial experience and expertise in child welfare class actions nationally; and
- d. Weil, Gotshal & Manges LLP, a global private law firm with extensive experience in complex civil litigation including class action litigation and a non-litigation office in Providence.

17. The attorneys and entities listed above have investigated all claims in this action and have committed sufficient resources to represent the Class.

18. Each Named Plaintiff appears by a next friend, and each next friend is sufficiently familiar with the facts of the child's (or children's) situation to fairly and adequately represent the child's (or children's) interests in this litigation.

19. Defendants have acted or failed to act on grounds generally applicable to the Class, necessitating declaratory and injunctive relief for the Class. Plaintiffs' counsel know of no conflicts between or among members of the Class.

IV. The Parties

A. The Named Plaintiffs

CASSIE M.

20. Cassie is a 15-year-old girl who has been known to DCYF for more than eight years and has been in foster care for the last six years. Throughout her time in DCYF custody, the agency has failed to provide her with a safe, stable or permanent family. Instead, DCYF has moved Cassie through numerous and inappropriate placements; subjected her to inconsistent, harmful contact with her mother; and separated her from her four sisters. Although she was freed for adoption more than two years ago, upon information and belief, DCYF has left Cassie in foster care in a non-family group placement.

21. DCYF has been involved with Cassie's family since at least September 2003. By November 2004, DCYF had received at least four separate reports of abuse and neglect, including sexual and physical abuse, in her family's home. At that time, DCYF had knowledge that Cassie's father had had a child with her oldest half-sister, who was pregnant at 17. DCYF also had information that Cassie's father was a substance abuser, owned weapons, had been physically abusive toward Cassie, her mother, and her sisters and had threatened to kill them, and had been sexually inappropriate with another of Cassie's older sisters.

22. DCYF did not “indicate” any report of abuse and neglect until March 2005, when Cassie’s mother ordered Cassie’s 16-year-old sister out of their home. At this time, DCYF received a report that Cassie’s mother was abusing drugs and failing to care for her children, at least one of whom was infested with lice. DCYF again was told that Cassie’s father had sexually abused her oldest sister for years and had impregnated her, and that he had physically abused the girls and their mother. Cassie’s father was then in prison. Cassie’s mother’s then-boyfriend had a long DCYF history, including neglect and domestic violence and an extensive criminal record that included charges for indecent exposure and possession of drugs and firearms. Although the caseworker expressed concern about the boyfriend’s influence and noted that the boyfriend had punched Cassie’s older sister in the face, DCYF left Cassie and her sisters in the home. Subsequently, one of Cassie’s sisters reported that she had been sexually abused by her mother’s boyfriend.

23. In April 2005, Cassie’s mother was again “indicated” for neglect based on reports that Cassie, then eight years old, and her two sisters who remained in the home, ages five and 10, were sleeping alone in their apartment while their mother slept in a neighbor’s apartment. The apartment where the girls were living had no furniture or electricity, and the girls reportedly slept on the floor. DCYF also discovered that Cassie and her sisters suffered from chronic head lice, that was so severe that they were not permitted to attend school.

24. At this time, DCYF implemented support services and kept the children in the home, but Cassie’s mother was consistently non-compliant. In December 2005, DCYF learned that Cassie’s father had visited the home where Cassie, her mother, and her sisters were living in violation of a court order. DCYF failed to investigate.

25. In February 2006, Cassie and her two sisters who had been living in the home were removed from their mother's care based on her continued failure to comply with court-ordered treatment plans. DCYF initially pursued reunification with Cassie's father, despite the fact that DCYF only permitted him to have supervised visitation with his children and that DCYF knew that he had physically and sexually abused some of the girls. At the time, he had no permanent housing and no place for the girls to live.

26. DCYF placed Cassie and her two sisters into separate foster homes. DCYF moved Cassie to a new foster home less than two weeks later. In June 2006, Cassie's foster mother revealed to DCYF that she herself had been "red flagged" by DCYF. DCYF only then realized that the foster mother had an open case with DCYF and that the agency had been planning to terminate her foster parent license. Nonetheless, DCYF kept Cassie in this home for another nine months, when it moved her to a specialized foster home.

27. Also in 2006, Cassie's younger sister, who was just six years old, was placed in a shelter. DCYF kept the young girl in two shelter placements for more than nine months. Cassie was very upset that her sister was in a shelter and asked multiple times for her sister to live with her.

28. In August 2007, when she was 10 years old, DCYF moved Cassie to a residential treatment center. Despite her DCYF caseworker and supervisor's agreement in February 2009 that Cassie should be moved from her residential facility to a specialized foster home, and DCYF's assessment in April 2010 that Cassie was not doing well in the facility, DCYF kept Cassie in this institution for almost three years.

29. DCYF ensured that Cassie had regular contact with her mother throughout her time in DCYF custody, even after her mother's parental rights were terminated, and despite

DCYF knowing that the visits were chaotic and stressful for Cassie, and that Cassie and her younger sister exhibited aggression and other behavior problems following these visits. Cassie's mother often arrived at the visits late or cancelled them altogether, and when she did attend, she sometimes failed to pay attention to Cassie, which upset this young girl. On several occasions, Cassie reported to DCYF prior to a visit that she did not want to see her mother.

30. As early as April 2005, Cassie was taking medication for attention deficit hyperactivity disorder (ADHD), although a subsequent evaluation in October 2007 revealed that this diagnosis was incorrect. Cassie has also been diagnosed with adjustment disorder, disturbance of conduct, and bipolar disorder. She has been prescribed multiple psychotropic medications, and as of November 2010 she was taking medication multiple times a day. Cassie has also been diagnosed with learning disabilities and has an education plan in place.

31. In May 2008, more than two years after Cassie entered foster care, DCYF filed a petition to terminate her mother's parental rights and in September 2008 Cassie was freed for adoption. Since this time, upon information and belief, DCYF has failed to find her a permanent home. Cassie often talks about wanting a family and she has expressed a desire to be placed with her younger sister in an adoptive home. In March 2010, DCYF reiterated its intent to find Cassie an adoptive placement. Yet, instead of seeking and securing an appropriate adoptive home for Cassie, as late as December 2010 DCYF continued to arrange visits and telephone contact between Cassie and her mother. In the meantime, Cassie remained in a non-family congregate setting. In June 2010, Cassie was moved to a group home because at 13 years old she had aged out of the previous treatment facility. As of December 2010, Cassie, at age 14, was still living in this second congregate placement.

32. As a result of Defendants' actions and inactions, Cassie has been and continues to be irreparably harmed. Defendants have violated Cassie's constitutional and statutory rights by failing to protect her from harm; by separating her from her sisters; by failing to provide her with appropriate, least restrictive placements; by failing to provide her with mental health services necessary to prevent her mental health from deteriorating while in DCYF custody; and by failing to provide necessary and appropriate permanency and adoption services, all of which are required by law and reasonable professional judgment.

33. Named Plaintiff CASSIE M. appears through her next friend Kymberli Irons. Ms. Irons has worked in the Providence School Department for 21 years and has been a special educator for 29 years. Ms. Irons holds Masters degrees in Special Education and in Integrated Education. She has served as a Behavior Specialist with the Providence School department for 12 years. Ms. Irons worked with Cassie as her Behavior Specialist when Cassie was between the ages of eight and nine. Ms. Irons also met with Cassie's mother, and spoke with Cassie's classroom teacher, principal, and assistant principal about Cassie on multiple occasions. Ms. Irons is truly dedicated to Cassie's best interests.

ALEX AND JARED C.

34. Alex, eight years old, and Jared, 10 years old, are brothers who have been in DCYF foster care since 2006. DCYF has failed to provide the boys with safety, stability or permanency during their five years in care. DCYF moved the boys between multiple placements during their first two years in foster care while maintaining the goal of reunifying the boys with their parents, who repeatedly demonstrated that they were unable to provide a safe and stable home for their children. In total, Alex and Jared have each experienced at least six placements, including two in institutional settings and one in a foster home where they were both sexually

abused. Upon information and belief, DCYF has left the boys separated from one another and their younger sister, and although they were freed for adoption in 2009, DCYF has not secured a pre-adoptive home for Jared.

35. Alex and Jared's family has a long history with DCYF beginning in July 2002, before Alex was born. Prior to that, their mother's rights to at least one of her three oldest children were terminated by another state. Their mother has a history of drug use, depression, psychiatric hospitalization, and noncompliance with treatment plans, which was known to DCYF. Their father has been charged three times with domestic assault, and has been incarcerated multiple times for these and other offenses. Prior to the boys being brought into care in November 2006, DCYF substantiated three reports against their mother for neglect, and one against her for physical abuse of their sister. Despite this, and despite DCYF's knowledge of the boys' mother's continued drug use since at least 2002, DCYF maintained the boys at home until 2006.

36. In July 2006, it was reported to the police that the boys' parents were involved in domestic violence and that both Alex and Jared reported that they had witnessed it. The boys moved to a shelter with their mother and younger sister. While they were living at the shelter, shelter staff reported to DCYF that the boys' mother was overwhelmed by caring for her children and that she planned to drop them off with their father.

37. In early August, Alex and Jared's mother dropped the boys off at their father's house and drove off. Their mother and sister reappeared in the father's home 12 days later. With DCYF knowledge, all the children remained with their father, despite his history of violence and DCYF's previous recommendation that the children not be alone with him. DCYF also instructed that the children and their father reside with his mother (the children's

grandmother), yet further required that he not allow the grandmother to be alone with the children, as she had a DCYF history of child maltreatment.

38. However, in November 2006, DCYF discovered that the boys' father had been missing for a month and that he had left them alone with their grandmother. At this point DCYF discovered that the boys' mother and sister had been missing for two months. DCYF took the boys, and their sister once DCYF located her, into foster care. Soon thereafter, their parents were both arrested. Both parents spent significant portions of the next few years incarcerated due to the mother's ongoing drug use and the father's domestic violence, drug charges, assault, and vandalism. During much of this time, the children's permanency goals remained reunification.

39. When the children entered DCYF custody in November 2006, DCYF placed Alex and Jared in a foster home separated from their younger sister. The boys have not lived with their sister since entering custody. DCYF moved the boys from their first foster home after just five months and placed them in a new foster home, where two adopted children were also living. In November 2007, DCYF confirmed that at least one of the adopted children in the home had been sexually abused by both parents in the home. DCYF closed the foster home following a police investigation, and the boys' foster parents were both arrested.

40. As a result, DCYF moved Alex, then four years old, and Jared, then six years old, from this home and placed them in a shelter, where DCYF kept them for two months. In January 2008, DCYF moved the boys from the shelter into a foster home; around this time, it was noted that their behavior had begun to deteriorate and that the boys had begun throwing tantrums and had become destructive. After less than a month in this home, the boys' foster mother reported that Jared said that Alex had acted out sexually towards him. When questioned

by the caseworker, Alex reported that his former foster parents had sexually molested him and his brother. He also indicated that he had seen his father engage in sexual activity with his girlfriend.

41. DCYF removed the boys from the foster home in early 2008 and placed them, still only four and six years old, in separate group homes in different towns. At this time, nearly three months after DCYF removed them from the abusive home, they each received their first sexual abuse psychological evaluation and counseling session with a therapist. Alex disclosed to his therapist that their previous foster parents had had the boys engage in sexual activity, which the foster parents taped.

42. DCYF kept Alex in his group home until August 2009, a year and a half after placing him there. DCYF kept Jared in his group home until January 2010, two years after placing him there. Both boys received therapeutic services while at the group homes. Eventually, DCYF moved each boy to a different family foster home. Both continue to be treated for the trauma they have endured, and Jared has been prescribed psychotropic medications to help him control his behavior.

43. In March 2009, more than two years after the boys were brought into custody, Alex and Jared's parents' rights were terminated due to lack of progress in their case plans. Both boys remain in foster care today, and, although Jared, now age 10, is free for adoption, upon information and belief, he remains separated from Alex, and DCYF has not secured a pre-adoptive home for him.

44. As a result of Defendants' actions and inactions, Alex and Jared have been and continue to be irreparably harmed. Defendants have violated Alex's and Jared's constitutional and statutory rights by failing to protect them from harm; by separating each of

them from their siblings; by failing to provide them with appropriate, least restrictive placements; by delaying services necessary to help them cope with their traumas; and by failing to timely provide necessary and appropriate permanency and adoption services, all of which are required by law and reasonable professional judgment.

45. Named Plaintiffs ALEX and JARED C. appear through their Next Friend, Gregory C. Elliott. Professor Elliott is a Professor of Sociology at Brown University in Providence, Rhode Island, where he has taught for the last 28 years. Professor Elliott is a social psychologist, specializing in the social development of the individual and the integration of the individual into society. In his work, he has dealt with issues of child maltreatment. Due to his expertise and research, Dr. Elliott has been held by the First Circuit in this case to be “aware of the issues and problems children face in foster care and he is familiar with the perils to which Plaintiffs have been exposed,” and therefore declared an appropriate next friend for Named Plaintiff Danny and three other named plaintiff children whom he did not know personally in the instant lawsuit. *Sam M. v. Carcieri*, 608 F.3d 77, 93 (1st Cir. 2010).

TERRENCE T.

46. Terrence is a 16-year-old boy who has been in DCYF custody since he was six years old. In the 10 years that Terrence has been in DCYF custody, DCYF has failed to protect Terrence from harm and provide him stability or placement with a permanent family. During his time in DCYF custody, DCYF has moved Terrence through numerous placements, including four separate institutional settings where he has lived for over six years. Now 16, Terrence remains in foster care, isolated from his biological family without any prospects for living with a permanent, loving family.

47. DCYF first investigated his mother for neglect in early 2000, when one of her children's teachers found Terrence's seven-year-old sister home alone. During this investigation, Terrence's mother told the DCYF workers that Terrence was living with his godmother and had been for most of his life.

48. In early 2001, DCYF brought Terrence and his four siblings into DCYF custody when his mother was arrested for transporting drugs into the country. Six-year-old Terrence remained in his godmother's home, where he had been living. DCYF knew that the godmother had a criminal history and lacked a stable home.

49. Terrence stayed in foster care with his godmother until December 2001, when DCYF removed him after she was arrested for dealing drugs in Terrence's presence. In 2002, after he began counseling, Terrence revealed to his caseworker that he often had to participate in his godmother's drug deals, passing money and parcels between individuals, and often sleeping in the car while she worked. His caseworkers also determined that Terrence had been physically abused by his godmother while in DCYF custody.

50. After DCYF removed Terrence from this home in late 2001, DCYF placed him in a licensed foster home. In June 2002, when he was in first grade, DCYF moved Terrence to a residential treatment center on the recommendation of his neurologist. At the time, he was noted to have attention deficit hyperactivity disorder (ADHD), poor behaviors and feelings of separation and loss.

51. In July 2002, Terrence was sent home from camp after telling a counselor that he "wanted to drown himself." In January 2003, Terrence disclosed that an aunt had physically abused him.

52. Terrence's father's rights were terminated in 2003 and his mother's in 2005, but DCYF identified no pre-adoptive placements for him. Rather than finding him a family home in 2004, when his clinicians said he was ready to be discharged from his group home, or an adoptive family in 2005, when his parents' rights were terminated, DCYF kept Terrence in the residential treatment center until January 2008, nearly six years after he had arrived there and four years longer than was therapeutically indicated.

53. In January 2008, DCYF placed Terrence in a foster home with his younger brother. His brother had also lived in an institution for years, had been diagnosed with major depression and post-traumatic stress disorder, and had made multiple suicide attempts. In April 2008, when Terrence had difficulty adjusting to this foster home, DCYF moved him into a group home. On the day DCYF moved him, Terrence gave his brother a long hug and cried. During the drive from the foster placement to the group home, Terrence was emotional and cried a lot.

54. In October 2008, DCYF moved Terrence and his younger brother to California to live with an aunt whom they had never met prior to her expressing interest in being a placement resource. While in California, it took months for the boys to receive medical insurance and necessary mental health services. Terrence was removed from this home in November 2009 and returned to Rhode Island, while his younger brother remained in California. At that point, Terrence was separated from all of his six siblings, some of whom he had not had regular contact with for years. In Rhode Island, DCYF once again placed him in a group home, where he was sad and disengaged and had attempted suicide. He was prescribed Adderall and Prozac. Upon information and belief, today Terrence remains in an institutional facility even though it has been recommended that he receive more one-on-one attention.

55. As a result of Defendants' actions and inactions, Terrence has been and continues to be irreparably harmed. Defendants have violated Terrence's constitutional and statutory rights by failing to protect him from harm while in state custody; by failing to provide him with mental health services necessary to prevent his mental health from deteriorating while in DCYF custody; by separating him from his siblings; by failing to provide him with appropriate, least-restrictive placements; and by failing to provide necessary and appropriate permanency and adoption services, all of which are required by law and reasonable professional judgment.

56. Named Plaintiff TERRENCE T. appears through his Next Friend, Gregory C. Elliott. Professor Elliott is a Professor of Sociology at Brown University in Providence, Rhode Island, where he has taught for the last 28 years. Professor Elliott is a social psychologist, specializing in the social development of the individual. In his work, he has dealt with issues of child maltreatment and the integration of the individual into society. Due to his expertise and research, Dr. Elliott has been held by the First Circuit in this case to be "aware of the issues and problems children face in foster care and he is familiar with the perils to which Plaintiffs have been exposed," and therefore declared an appropriate next friend for Named Plaintiff Danny and three other named plaintiff children whom he did not know personally in the instant lawsuit.

Sam M. v. Carcieri, 608 F.3d at 93.

TRACY L.

57. Tracy, 16 years old, was taken into DCYF custody with her younger sister in 2002, when she was seven years old. In her nine years in foster care, DCYF has moved Tracy at least 18 times and through at least 13 placements, including two different residential treatment facilities, at least three different group homes, at least one shelter, and five foster homes. She

has also been hospitalized at least 14 times. Tracy has been moved through 11 different schools since entering DCYF custody.

58. Prior to Tracy and her sister's entry into foster care in 2002, their parents had been reported to DCYF at least five times for suspected neglect and abuse; at least two of these times resulted in investigations that were unfounded. In May 2002, it was reported to DCYF that Tracy, then six years old, had been sent home from school for two consecutive days for smelling like cat urine. The investigator found the home to be unlivable, as it was full of debris and clutter, had no running water, had a kitchen that was full of decaying food, smelled strongly of animal urine, and had rat holes on the outside. There were bruises and lesions on the younger girl's face and body, including her eyes, buttocks, and groin. She stated during a medical exam that her mommy did it. The physician noted probable physical abuse, but the children were not removed from their parents' care. The home was condemned and the family was required to move. DCYF filed a neglect petition against the parents in June 2002 on behalf of the girls, but left the girls in their mother's care.

59. DCYF kept the girls with their parents for six months after the neglect petition was filed, during which time their caseworkers had persistent concerns about their home life, particularly the parents' lack of permanent housing and general lack of parenting skills. The parent aide who visited the home also had continued concerns about the parents' general parenting skills and the children's care.

60. In December of 2002, it was reported to DCYF that there was domestic violence in the home and that the girls' father had hit Tracy's sister with "cords." As a result of this investigation, DCYF took Tracy, then seven years old, into foster care custody with her sister. The next day, their foster mother observed bruises on Tracy's sister's buttocks, which

both girls said were from their mother, father, and grandmother hitting her with a broken hairbrush, a punishment Tracy reported she had endured as well. Tracy reported that she had also been hit in the past, and that their parents would hit them with an orange cord and shove dirty socks in their mouths when they cried. Allegations of excessive and inappropriate discipline were founded.

61. DCYF moved Tracy and her sister from their initial foster home less than a week after they were placed there due to the foster parents' difficulty in managing the girls' behaviors. DCYF moved the girls to a shelter. Staff reported that the girls were aggressive with one another, had limited tolerance for direction, and threw tantrums when they did not get their way.

62. DCYF separated the girls and moved Tracy to a specialized foster home in late January 2003. A month later, Tracy became extremely agitated when sent to take a bath, and her foster parents were unable to calm her down. She was admitted to a psychiatric hospital, where she disclosed to a therapist that her head had once been held under water. She was diagnosed with post-traumatic stress disorder, attention deficit hyperactivity disorder (ADHD), and depression. She was prescribed Clonidine and Ritalin and sent back to the same foster home later that month.

63. As of June 2003, both of Tracy's parents were cooperating with services, but they had yet to find permanent housing. DCYF continued to pursue reunification for the girls with their parents until October 2003, when Tracy disclosed that she had been sexually abused by her father. Tracy later reported that her mother knew about the abuse, and that when Tracy would exit the room crying, her mother would shove a dirty sock in her mouth. DCYF

suspended visitation with both parents due to the allegations and on the recommendation of the girls' therapists.

64. In May 2005, after Tracy attempted to testify against her father, she had to be admitted to a psychiatric hospital. This day in court was the first time she had seen her father in two years. After this hospitalization, her foster parents determined that they could no longer provide for Tracy's needs, and DCYF placed her at a residential treatment facility. At this time, she was diagnosed with reactive attachment disorder in addition to her earlier diagnoses and was taking Zoloft, Seroquel, and Ritalin. She was nine years old. DCYF kept Tracy at the residential treatment facility for almost one and a half years.

65. In October 2006, DCYF transitioned Tracy to a foster family home but she was again hospitalized in December of that year. She was then moved in August 2007 to a specialized foster home, but was in crisis in October of that year. In March 2008, her therapist noted that Tracy's reactive attachment disorder was so severe that she would have to be placed in residential care, as she could not function in a family setting at that time.

66. Since she left her most recent foster home in March 2008, Tracy has moved between residential treatment centers, shelters, group homes and psychiatric hospitals at least 18 times, sometimes out of state. Tracy no longer is visited by her mother, and only rarely sees her sister. Upon information and belief, although Tracy is free for adoption, DCYF is not pursuing an adoptive placement for her.

67. As a result of Defendants' actions and inactions, Tracy has been and continues to be irreparably harmed. Defendants have violated Tracy's constitutional and statutory rights by failing to protect her from harm while in state custody and by failing to

provide her with adequate and consistent mental health services necessary to prevent her mental health from deteriorating while in DCYF custody.

68. Named Plaintiff TRACY L. appears through her next friend Kymberli Irons. Ms. Irons has worked in the Providence School Department for 21 years and has been a special educator for 29 years. Ms. Irons holds Masters degrees in Special Education and in Integrated Education. She has served as a Behavior Specialist with the Providence School department for 12 years. Ms. Irons worked with Tracy as her Behavior Specialist when Tracy was between the ages of eight and ten. Ms. Irons saw Tracy daily over the course of approximately one year, and was involved in her educational and behavioral planning. Ms. Irons also met with multiple foster families on Tracy's behalf and helped plan while Tracy was hospitalized. Ms. Irons is truly dedicated to Tracy's best interests.

DAVID T.

69. DAVID T. is 18 years old and has been in DCYF's custody for over 15 years. DCYF has cycled him through more than 14 placements, all but two of them shelters or other institutions. When David was four years old, a potential adoptive placement fell through, and David experienced loss and trauma that should have been treated. Instead, DCYF moved David to a shelter. David has not lived in a home since, and his lifetime of living in institutions, compounded with the stress of his disrupted adoptive placement, has caused his mental health to steadily deteriorate. David entered care when he was only two years old, and finding him a permanent, loving family was completely feasible. Yet DCYF has denied him the appropriate decision-making, services, and planning necessary to find him a permanent home. DCYF has done nothing to prepare David to live in a real home, and for the last decade it has not taken any of the necessary steps toward finding David a family with whom to live.

70. DCYF removed David from his mother in 1996 due to neglect. DCYF had previously taken his older brother into custody on grounds of neglect and possible sexual abuse by his mother. By the time David entered foster care, his mother had already been deemed unfit to care for at least one of David's siblings and had lost her parental rights. Despite clear indications that David had been sexually abused while in his mother's care, DCYF failed to ensure that he received a sexual abuse evaluation or appropriate treatment upon his entry into foster care or thereafter.

71. DCYF first placed David with a foster mother with whom he lived for two years and to whom he became attached. This was the first—and last—loving, lasting, stable home David would experience for the next 11 years. At the age of four, David was removed from the foster mother he referred to as “Mommy Mary” because she was unable to continue to care for him. Despite its obligation to place David in a family-like environment, DCYF moved the young child to a shelter. DCYF next moved David, not to a foster home, but to another shelter. By this time, David's mother's parental rights had been terminated, leaving him free for adoption. David spent a total of three months in shelters while DCYF tried to locate an adoptive home.

72. DCYF next sent David to an aunt in Michigan who expressed interest in adopting him. The aunt willingly cared for David, but encountered housing problems and other difficulties. Instead of supporting the aunt so that she could keep David, DCYF brought him back to Rhode Island and put him in a shelter where he had previously stayed. When he arrived there, he refused to get out of the car and pleaded with the caseworker to bring him back to “Mommy Mary.” Shelter staff approached the car and told four-year-old David, “the rules here

have not changed.” David silently got out of the car and walked into the shelter. This was at least the fifth placement David experienced before his fifth birthday.

73. David’s behavior deteriorated while living at the shelter. Although his school indicated that David needed services to address his increasingly disruptive behavior, DCYF failed to provide them. At times DCYF failed to fulfill its responsibility to transport David to school, leaving him to spend entire days in the shelter with nothing to do. David’s behavior grew worse, and after several months the shelter asked DCYF to move him. DCYF then sent David to yet another institution, where he was injured because he did not receive proper supervision. David was severely scalded there when, at the age of five, he tried to heat water in a microwave oven.

74. When another of David’s aunts expressed interest in caring for David, DCYF failed to pursue this opportunity. By 2000, four years after assuming custody of David, DCYF still had no viable plan for finding a permanent home for him. DCYF was aware that David’s emotional state was steadily declining, but it failed to provide the therapeutic services he needed. When the facility where David was residing informed DCYF that it could not meet his needs, DCYF nevertheless left David in that institution for several months, aware that his mental health needs were only worsening.

75. DCYF placed David in a psychiatric hospital when he was six years old. Although he was scheduled to be released from the hospital within a month, DCYF left David in this highly restrictive placement for five months, until July 2001, simply because it had no other placement option for him. DCYF finally moved David to St. Vincent’s Home, a residential treatment facility where he lived for the next two years until he was eight years old. While at St. Vincent’s, David was sexually abused by a roommate, began to act out sexually, and started to

wet his bed almost nightly. David's mental health deteriorated to such an extent that in 2003 DCYF moved him to yet another institution where he required one-on-one supervision.

Although DCYF's case plan for David indicated that he would spend only three to six months at this institution, after which he would need to live with a family, David remained at the institution for three years, and he has yet to be placed with a family.

76. Over a four-month period in 2003, David was restrained 105 times by facility staff. That year, DCYF decided that, at the age of 10, after eight years in DCYF custody, David had become "too damaged for placement." DCYF finally permitted adoption recruitment staff to meet David in 2004, eight years after it registered him for adoption. However, later that year it was decided that adoption would be inappropriate for David and suspended efforts to find an adoptive home for him.

77. In 2006, DCYF moved David to a residential treatment facility out of state. Although David was only 12 years old, he was placed with an 18-year-old roommate. While at this facility, David engaged in sexual self-mutilation. When facility staff asked DCYF if sexual abuse was an issue for David, DCYF erroneously reported that there was no history of sexualized behavior and no known sexual abuse. Between 2005 and 2006, David gained over 50 pounds.

78. Despite DCYF's obligation to ensure the safety and well-being of Plaintiff Children through frequent caseworker visits, five different DCYF case workers met with David a total of only 12 times from 2001 to 2005, including only one visit per year in 2004 and 2005. David has had no adult continuously involved in his life. Because DCYF has moved David so many times, his education has been fragmented and disrupted. David attended three different kindergartens and was moved to new schools four more times between the first and seventh grades.

79. In May 2007, DCYF sent David to live in an institution in Massachusetts. Health care professionals have documented that his acute service needs result in part from his history of multiple placements. David has been diagnosed with bipolar disorder, mild mental retardation, and “environmental/situational influences, including his history of neglect and his multiple placements.” DCYF has taken few, if any, steps to prepare David for life outside an institution. David has an older brother who has also come forward to care for him, but DCYF has not taken the necessary steps to determine whether the brother would be a suitable permanent caretaker.

80. As a direct result of Defendants’ actions and inactions, David has been and continues to be irreparably harmed. Having entered foster care at the age of two, he is still languishing in care over 15 years later. DCYF’s failure to provide David with permanency causes him harm. David now has serious psychological problems that DCYF has exacerbated by moving him from placement to placement and by failing to provide mental health services to treat his problems as they emerged when he was a young boy. DCYF has also caused David harm by not providing his mental health professionals with his full history, depriving them of information necessary for his proper treatment.

81. Defendants have violated David’s constitutional and statutory rights by failing to protect him from harm while in state custody; by failing to provide him with mental health services necessary to prevent his mental health from deteriorating while in DCYF custody; by failing to provide him with appropriate, least-restrictive placements; and by failing to provide necessary and appropriate permanency and adoption services, all of which are required by law and reasonable professional judgment.

82. Named Plaintiff DAVID T. appears through his Next Friend, Mary Melvin. Ms. Melvin has worked as a Senior Companion in the Senior Companion Program at the Department of Elderly Affairs in Cranston, Rhode Island. Previously, Ms. Melvin worked for many years at a nursing home for the elderly and handicapped in Providence, Rhode Island. Ms. Melvin served as a foster parent for at least 25 children in Rhode Island's foster care system over a 20-year period. In 1993 and 1997, she received the Rhode Island Foster Parent of the Year Award. Ms. Melvin was a foster parent to David T. from 1996 to 1998, and she continued to be a resource for him after he left her care. Ms. Melvin resides in North Providence, Rhode Island.

DANNY B.

83. DANNY B., age 10, entered foster care seven years ago with his younger brother Michael, but has been known to DCYF for most of his young life because of his mother's chronic neglect of him. In the years that he has been in custody, he has resided in what DCYF knows can only be temporary and inappropriate placements, in one of which he was seriously abused. Throughout his time in care, DCYF has failed to provide timely psychological services to address Danny's mental health problems, which are becoming more acute as he remains without a permanent home.

84. Danny and his brother Michael were first reported to DCYF as being neglected by their mother in January 2004. DCYF investigated the report and decided to take no action. Danny and his brother again came to the attention of DCYF four months later when, at ages three and two, they were found wandering unsupervised outside their home at 6 a.m. When the children were returned to their home, their mother, who has an extensive arrest record, was found unconscious from alcohol abuse. DCYF left Danny and his brother in the home, but required the mother to agree to certain services.

85. In January 2005, Danny and his brother were again reported wandering unsupervised outside the home. DCYF investigated the report, but again decided to take no action. The next month, DCYF visited the home and found it to be unfit for human habitation, with human feces all over the bedroom and nowhere for Danny and Michael to sleep; their mother was again intoxicated. DCYF left the boys in this wretched home. In March 2005, DCYF received a report that the brothers were again wandering the streets. Despite these repeated reports, DCYF did not remove Danny and his brother from this harmful environment until April 2005. When DCYF did remove them from their mother's home, it assigned Danny and his brother the goal of reunification.

86. DCYF first placed the brothers in the unlicensed home of their maternal great-grandmother, without first conducting a safety and background check. The great-grandmother told DCYF that she could only care for Danny and Michael temporarily and the brothers had to be moved within the week because of the great-grandmother's poor health. Instead of locating another home where the brothers could be together, DCYF separated Danny and Michael and placed them in separate foster homes. DCYF later returned Michael to the boys' maternal great-grandmother.

87. In July 2005, DCYF placed Danny in the home of a foster mother with a DCYF history of abuse complaints dating back to 1999. These reports included allegations that she had left children she was fostering with an unapproved caretaker for over a week, during which time the children were beaten with a wire hanger and other objects. This is the home in which Danny was later sexually assaulted.

88. During 2005, Danny suffered mental health problems which DCYF failed to timely address. Although DCYF knew that Danny was in need of specialized services, it did

not provide them to him until the end of August 2005. By the end of 2005, DCYF had evidence that Danny needed a sexual abuse evaluation.

89. Throughout 2005, Danny's mother made no progress towards addressing the problems that had led to the boys' removal. By May 2005, she was not complying with drug treatment, had tested positive for drugs, and was missing visits with her sons, causing Danny significant distress. By June, she had been arrested twice for drug possession and had stabbed herself in the chest in a suicide attempt. By August, she was homeless. At none of these junctures did DCYF change Danny's permanency goal from reunification to another, more viable and appropriate goal. In December 2005, DCYF was directed to free Danny for adoption by terminating his mother's parental rights if no progress was being made toward reunification by March 2006. Although no progress was made, DCYF failed to file a termination petition until July 2006.

90. In July 2006 five-year-old Danny was sexually assaulted in the home of the foster mother whose prior dangerous history was known to DCYF. The foster mother's 15-year-old grandson, who lived in the home, was seen emerging from the bathroom of the house, his penis erect, when he grabbed Danny, pulled him into a bedroom, and locked the door. Danny screamed, "Don't touch me!" When the grandson opened the door, Danny's pants were down. Danny was immediately removed from this foster home, and the foster home was closed the same day. Danny told investigators that the grandson had sexually exposed himself on approximately four prior occasions. During a previous intervention in the home, DCYF had instructed the foster mother to ensure that the grandson sleep in a bedroom separate from another child.

91. After this episode of sexual abuse, DCYF placed Danny in yet another temporary foster home. In August 2006, DCYF reunited him with his brother in the home of his maternal great-grandmother, who was unable to offer the boys a permanent home. Upon being placed together, both boys began to exhibit sexualized behaviors. Within a month, DCYF removed Danny from his great-grandmother's home because of these issues. DCYF sent Danny to a group home in Middletown.

92. Excluding respite placements, as of June 2007, Danny had been in at least six placements while in DCYF custody, including DCYF's original placement of the brothers with their mother for in-home services. Despite the fact that Danny is only 10 years old and has been in care since 2004, he remains separated from his brother, with no prospect of adoption.

93. As a result of Defendants' actions and inactions, Danny has been and continues to be irreparably harmed. Danny has been sexually abused in an unfit foster home and, at the age of five, was institutionalized to address his acute mental health problems. Because DCYF has not provided proper permanency planning, Danny does not have any current prospect of growing up in a loving and permanent home. The lack of any prospect of growing up in a safe and stable home is psychologically harmful. Danny has experienced mental health problems which DCYF has failed to adequately address.

94. Defendants have violated, and continue to violate, Danny's constitutional and statutory rights by failing to protect him from harm while in care; by failing to develop and implement an appropriate permanency plan in a timely manner to allow him to secure a permanent home; and by failing to timely address his mental health needs, all of which are required by law and reasonable professional judgment.

95. Named Plaintiff DANNY appears through his Next Friend, Gregory C. Elliott. Professor Elliott is Associate Professor of Sociology at Brown University in Providence, Rhode Island, where he has taught for the last 28 years. Professor Elliot is a social psychologist, specializing in the development of the individual. In his work he has dealt with issues of child maltreatment and the integration of the individual into society. Due to his expertise and research, Dr. Elliott has been held by the First Circuit in this case to be “aware of the issues and problems children face in foster care and he is familiar with the perils to which Plaintiffs have been exposed,” and therefore declared an appropriate next friend for Danny and three other named plaintiff children whom he did not know personally in the instant lawsuit. *Sam M. v. Carcieri*, 608 F.3d at 93.

B. The Defendants

96. Defendant LINCOLD D. CHAFEE is the Governor of Rhode Island and is sued in his official capacity. Pursuant to Article IX, Section 1 of the Constitution of Rhode Island of 1986, the executive power of the state is vested in the Governor. Pursuant to Article IX, Section 2 of the Constitution of Rhode Island of 1986, the Governor is responsible for ensuring that all executive departments and agencies within the state, including DCYF, faithfully execute and comply with applicable federal and state law. Governor Chafee maintains his principal office at the Office of the Governor, State House, Room 115, Providence, Rhode Island, 02903.

97. Defendant STEVEN M. COSTANTINO is the Secretary of the Executive Office of Health and Human Services in Rhode Island and is sued in his official capacity. The Executive Office of Health and Human Services provides common strategic planning, fiscal management, and related policy and programmatic oversight to and across designated human services departments within the Rhode Island executive branch, including DCYF. Secretary

COSTANTINO maintains his principal office at the Pastore Complex, Hazard Building, 74 West Road, Cranston, Rhode Island, 02920.

98. Defendant JANICE E. DEFRANCES is the Director of the Department of Children, Youth and Families and is sued in her official capacity. Pursuant to section 42-72-1 of the Rhode Island General Laws, Director DeFrances is responsible for administering certain child welfare services and programs, including services and programs provided and administered by DCYF, and assuring that all such services and programs operate in conformity with constitutional, statutory, and regulatory requirements. Director DeFrances serves by appointment of the Governor. Director DeFrances maintains her principal office at the Department of Children, Youth and Families, 101 Friendship Street, Providence, Rhode Island, 02903.

V. The Rhode Island Child Welfare System

99. The Department of Children, Youth and Families is responsible for ensuring the safety and well-being of the children it takes into custody in response to allegations of abuse or neglect. Its Director, Defendant DeFrances, is responsible for administering and managing all child welfare staff and services statewide and for reporting to the Governor, Defendant Chafee.

100. DCYF has the duty to deliver child protective services, which include the investigation and assessment of reports of abuse and neglect occurring in family homes and in foster care placements, and the implementation of timely, appropriate corrective steps, including a child's removal from home or a foster care placement if warranted to keep the child safe when abuse or neglect of the child may have occurred.

101. DCYF also has the duty to ensure that children in state foster care custody are safe and to provide state-supervised services that meet the basic needs of children in its foster

care custody. Such services include placing children in screened, licensed foster homes or other appropriate placements and providing children counseling to help them deal with the trauma that caused them to be removed from their homes and with the further trauma associated with being separated from their families. Foster care services also include the development and implementation of appropriate permanency plans designed to return children home quickly and safely, or, if that is not possible, timely providing children another permanent home, usually through adoption. In addition, as the legal custodian for children in state foster care custody, DCYF is responsible for ensuring that all children in foster care receive medical, dental, and mental health treatment; education; and assistance with developmental needs.

102. DCYF operates four regional offices responsible for case management and planning and for ensuring the delivery of necessary services to children and families; a statewide Adoptions Unit responsible for adoption-related functions such as recruiting adoptive parents, matching children with adoptive families, and coordinating with private agencies that contract with DCYF to provide specialized and targeted adoption planning and support; and a statewide Licensing Unit responsible for licensing and monitoring foster homes, adoptive homes, and group homes, including relative and child-specific placements. Licenses must be reviewed every six months and must be renewed annually to remain valid.

103. DCYF contracts with private child-placing agencies in Rhode Island for the provision of many foster care services, including the operation of shelters, group homes, residential treatment centers, and therapeutic foster homes. DCYF remains legally responsible for every Plaintiff Child who receives foster care services from a child-placing agency.

104. The Licensing Unit is also responsible for licensing child-placing agencies, promulgating the rules governing them and the standards that they must meet in furnishing

contracted services, and monitoring their compliance with all applicable rules and standards.

The Licensing Unit is also responsible for investigating regulatory violations and enforcing child-placing agencies' compliance with DCYF regulations and policies.

VI. Defendants Have Long Known That Rhode Island's Child Welfare System Cannot Fulfill Its Duties to Plaintiff Children Without Urgent, Systemic Reform

A. The 2003 System of Care Task Force Report Concluded that the Child Welfare System Was Harming Children and That Systemic Reform Was Necessary

105. In 2001, the State of Rhode Island created a System of Care Task Force ("Task Force") to study existing child welfare services in the state and "to design a full system of services that will provide effective supports and services to children and their families." The Task Force's January 2003 report confirmed that the state's foster care system was "disorganized and fragmented" and identified widespread systemic failings and inadequacies in the system. The report concluded that abused and neglected children in state custody were being harmed as a direct result of these failings.

106. The Task Force report documented that DCYF unlawfully allowed children to languish in foster care for years: "[N]early 3 in 10 children spend more than 3 years in care and nearly 1 in 8 spends 6 or more years in care. This data contradicts the mandate that 'foster care' should be used as a temporary solution to perilous problems with families. Federal and state law prescribe shorter time periods in which to achieve permanency for children."

107. The report found that DCYF failed to maintain an appropriate array of suitable placements for children in foster care: "Additional foster home resources, particularly for those 'hard to place' groups, are necessary in order to meet the needs of children entering placement." Instead of "actually choosing a home on the basis of suitability" for the individual child, placements were dictated by whatever bed happened to be available at the time. The

inadequacy of the placement array was due, in part, to inadequate reimbursement rates for foster parents and service providers and to the common perception of DCYF “as bureaucratic, unwieldy, insensitive and lacking in a child centered staff who can respond to foster families’ need for service in a timely fashion. Personal styles of both administration and line staff have been described over a range from ‘caring to cruel.’” This perception, along with the low reimbursement rates, was driving needed resources out of the system: “Over approximately a five year period, an alarming decline in the total number of licensed foster homes has been evident.”

108. The Task Force report found major deficiencies in the system’s delivery of essential services to children in foster care and their families, problems it attributed, in part, to low reimbursement rates for service providers: “The State lacks sufficient out-patient services for children and families. This has been attributed to minimal supply, despite the demand, reflecting inadequate reimbursement rates.” “Psychiatric care for [DCYF-involved] children and youth in Rhode Island... has been primarily driven by our system of reimbursement for care, rather than the individual needs and best interest of the patient.” DCYF’s failure to coordinate services for children in the foster system also hindered timely access to psychiatric services.

109. The Task Force also identified significant unmet workforce needs that directly resulted in harm to children: “Training for line staff is needed on gathering and communicating the types of child specific information that is critical for matching purposes. . . . Numerous foster placements are disrupted and resources lost due to poor communication.” Other personnel problems identified in the report included insufficient supervisory resources: “Due to the high volume of licenses that are processed on a daily basis and the number of social

caseworkers that must be supervised, the need for additional support for the supervisor remains a necessity.”

110. The Task Force concluded that children in state foster care custody were suffering physical and mental harm and trauma as a direct result of the child welfare system’s failings and deficiencies. Increasing numbers of children in foster care were being admitted to psychiatric hospitals in Rhode Island because of limited alternative treatment opportunities. Those children and youth suffered from a wide spectrum of mental illnesses, including adjustment disorder, major depression, post-traumatic stress disorder, and bipolar disorder. The Task Force found that children and their families had to endure excessive waits for necessary care because the system lacked outpatient mental health services and because mental health services were fragmented and lacked coordination. Similarly, the Task Force found that youth who had been discharged from in-patient treatment had to be readmitted because the system did not provide sufficient treatment alternatives to psychiatric hospitalization for youth with mental illness. This issue disproportionately affected adolescents in foster care.

111. The Task Force found that children were being harmed by being moved repeatedly among inappropriate DCYF placements. One manifestation of this harm was in education: “When children experience multiple and/or frequent moves from one placement to another, their academic progress is interrupted and gaps in their education develop. It is common among youth who spend a significant amount of time roaming around the placement system to be 2 or 3 years behind their peers in their education; many leave the system without a high school diploma.”

112. The Task Force report made clear that Defendants’ child welfare system was beset by systemic problems that were causing harm to children.

B. The 2004 Federal Child Welfare Review Identified Widespread Problems in Rhode Island's Child Welfare System

113. Because Rhode Island receives federal funding to operate its child welfare system, it is subject to periodic reviews, Child and Family Service Reviews ("CFSRs"), conducted by a division of the United States Department of Health and Human Services ("HHS"). These reviews are meant to assess whether states are in substantial conformity with certain federal child welfare requirements in the areas of child safety, permanency, and well-being, to determine what is actually happening to children and families receiving child welfare oversight and services, and to assist states to better help these children and families.

114. Rhode Island's CFRS was completed in 2004. In nearly every area reviewed, Rhode Island failed to meet federal standards, often by a wide margin. Rhode Island failed in the following areas: protecting children from abuse and neglect; safely maintaining children at home when possible and appropriate; providing permanency and stability in children's living situations; preserving continuity of family relationships and connections; enhancing families' capacity to provide for children's needs; ensuring that children receive services to meet their educational needs; and ensuring that children receive services to meet their physical and mental health needs. The CFRS found that, in 39 percent of cases, caseworkers failed to make monthly visits with children on their caseloads. These visits are essential to ensuring that children are safe. The CFRS further found that, in 66 percent of cases reviewed, caseworkers failed to make required visits with parents of Plaintiff Children, a key element in successful reunification of children and their parents. Finally, the CFRS found that children were not receiving adequate services to meet all of their physical and mental health needs 39.6 percent of the time.

115. Rhode Island also failed to meet federal requirements for five out of six “outcome measures” reviewed: repeat maltreatment; maltreatment while in foster care; re-entry into foster care; timely reunification; and multiple placements. For example, the CFSR reported that 1.1 percent of children in foster care were being reabused or neglected while in foster care, far above the then-national norm of 0.57 percent. The CFSR also found that 19.2 percent of Rhode Island children who were discharged from foster care re-entered DCYF custody within 12 months, compared to the accepted national norm of 8.6 percent.

116. Rhode Island also failed to meet federal requirements for six of seven “systemic factors” reviewed: its case review system; its quality assurance system; its training; its service array; its responsiveness to the community; and its licensing, recruitment, and retention of foster and adoptive parents.

C. The 2005 T.J. Wright Child Fatality Report Called for Systemic Reform

117. After T.J. Wright was killed by foster parents chosen by DCYF, a Child Fatality Panel conducted a full investigation into the matter. The Child Fatality Panel issued its report in October 2005, concluding that the Rhode Island child welfare system had serious, systemic, and pervasive problems. Among them:

- Background checks and other due diligence necessary to assure basic safety before placing a child in a kinship home were not being performed;
- Children were being placed in homes that were not licensed by DCYF to care for foster children, either because the homes had never been licensed or because the license had expired;
- Foster care home license applications were pending for unacceptable periods of time;
- “The caseloads of the social workers” were “untenable” and “social workers [were] unable to visit the very children they pledge to protect;” and
- Supervisors were not providing adequate supervision to caseworkers.

118. The Child Fatality Panel's Report made 15 specific recommendations,

including:

- The DCYF Director of Licensing or the Director of a Family Support Unit should be required to authorize the placement of a child in a kinship foster home since many children were being placed in relative care before licensure was completed;
- Social worker caseloads should be reduced to no more than 14 families per social caseworker;
- DCYF should implement an active supervision plan to remedy the failure of supervisors to actively supervise their caseworkers;
- The DCYF Licensing Unit should establish a firm six-month timetable for completing the licensure process on any family foster home; and
- Kinship placements should receive the background checks and other due diligence performed on third-party foster homes to assure basic safety before a child is placed in a kinship home.

D. The Child Advocate's 2006 Report Found Little Progress Had Been Made

119. On October 31, 2006, the Rhode Island Child Advocate reported on DCYF's progress in implementing the recommendations of the Child Fatality Panel. The Child Advocate concluded that DCYF had not reduced social worker caseloads and had not implemented performance evaluations or other reasonable means of supervising social workers and assuring accountability. As a result of these shortcomings, children in foster care remained in peril.

E. A 2006 Federal Regional Review Revealed Little to No Progress in Improving the Child Welfare System

120. After failing its Child and Family Service Review in 2004, Rhode Island was required to submit a Program Improvement Plan (PIP) to the federal government. The PIP, approved in August 2005, requires that DCYF make quarterly reports to the federal government on its progress in achieving the goals set out in its plan. The federal government also conducts

regional reviews of such progress. In June 2006, DCYF submitted its “Annual Progress and Services Report” to HHS, revealing that its ability to keep children safe had *worsened* since 2004, with an increase in both the recurrence of maltreatment to children and the incidence of child abuse or neglect experienced by children in DCYF care.

121. Children’s permanency and stability had also worsened, with increases in the percentage of children who experienced two or more placements during their first 12 months in care. DCYF also reported that, nearly two years after failing to meet the federal standards in 2004, DCYF was *less* effective at promoting reunification with parents, at securing guardianship or permanent placement with relatives for children, at supporting the relationship of child and parents, and at placing children in homes located near their siblings and parents. Caseworker visits with children had also decreased since 2004.

122. According to DCYF’s sixth quarterly report on the status of its progress between November 18, 2006 and February 12, 2007, Rhode Island continues to fail to meet the national accepted norm for the incidence of child abuse and neglect in foster care.

F. The Rhode Island Senate Has Recognized the Child Welfare System’s Chronic Failings

123. On March 22, 2007, after a legislative investigation and hearing, the Rhode Island Senate passed Senate Resolution 07-R128, in which it articulated numerous concerns in a series of findings. For example, the combination of rising caseloads and staff turnover was “creating a downward cycle of effectiveness and morale” among DCYF social workers.

124. The Resolution noted that DCYF’s problems were not new: “Numerous studies and recommendations have called on the department to institute a better coordinated and managed approach to the behavioral health needs of children.” The Senate declared that “DCYF must develop outcome and quality measures to guide funding and program design for child

welfare prevention and support services, including the use of performance-based contracting with providers of care.”

125. Based on these and other findings, the Rhode Island Senate formally requested ongoing monthly reports from DCYF to address the Senate’s concerns about caseloads, overtime hours and costs, and “[t]he Adoption and Foster Care Unit’s performance and outcome measurements, including numbers of homes licensed, awaiting training, and awaiting licensure by type of home (therapeutic, foster, kinship, pre-adoptive).”

126. Referring to the outcome measures used in the federal review, the Senate also formally requested biannual reporting of “progress toward achieving standards for the specific measures. . . [for] safety, permanency and well-being.” Finally, the Resolution requested biannual reports of “[t]he percentage of contracts issued by DCYF that report on specific family and child-focused outcomes, and include independent evaluations of the contracted-services effectiveness; and [s]ystem changes made to address the behavioral health needs of children in the most appropriate settings.”

VII. Current Systemic Child Welfare Failings and the Resulting Harm to Children

127. Defendants have failed to take appropriate steps to reform Rhode Island’s dysfunctional child welfare system, despite clear evidence that the system’s failings have deepened, have hurt children, and are putting children at further risk of harm.

A. Plaintiff Children Are Abused and Neglected in Foster Care

128. When DCYF takes a child into state foster care custody, it is responsible for the child’s safety and well-being as long as the child remains in custody. DCYF has failed to develop and provide the range of services and systems necessary to ensure the safety and well-being of the children in its foster care custody. Plaintiff Children suffer harm as a direct

consequence of this failure. There is no clearer example of this than the abuse or neglect of children while in foster care, such as the abuse suffered by Named Plaintiffs Alex, Jared, Terrence, David and Danny.

129. In five of the six years from Federal Fiscal Year (FFY) 2000 through FFY 2005, Rhode Island recorded the single highest rate of substantiated child abuse or neglect occurring to children in foster care among all states that reported data. Not only has Rhode Island's rate of abuse or neglect of children in foster care remained at or near the worst in the nation, it has consistently far exceeded benchmarks set by the federal government. In FFY 2004, 1.32 percent of children in foster care in Rhode Island were abused or neglected, more than twice the federal benchmark of a maximum rate of abuse or neglect of 0.57 percent for children in foster care. The following year, FFY 2005, the incidence of abuse or neglect of children in foster care in Rhode Island rose to 1.59 percent, or 2.79 times the federal benchmark.

130. Things have only gotten worse recently. For example, DCYF Region III recorded a 2.01 percent rate of abuse or neglect in care in May 2006. At the same time as Rhode Island's rate of abuse in care has risen, the federal benchmark has been revised to reflect a lower acceptable rate of abuse in care nationwide; in June 2006, the federal government published a new benchmark of 0.32 percent or less. In February 2007 alone, DCYF reported eight substantiated instances of abuse or neglect in care by a foster parent or facility staff. If abuse and neglect continues at this pace, Rhode Island would have a rate of abuse or neglect in care of 3.1 percent for the year 2007, or almost ten times the new federal benchmark.

131. The rate of abuse or neglect of children in foster care in Rhode Island is so high that children in Defendants' care are actually more likely to suffer abuse or neglect than their peers in the general population. In 2005, the most recent year for which data are available,

the rate of abuse or neglect for children in the general population was 1.37 percent but the rate of abuse or neglect for children in foster care was 1.59 percent.

132. The high rates of abuse or neglect of children in DCYF care are the direct consequence of Defendants' actions or inactions. DCYF assigns such large caseloads to its social caseworkers that they are unable to make the regular face-to-face visits to Plaintiff Children that are essential to ensuring that these children are safe. DCYF has so few foster homes that it places children in homes without licenses, depriving them of basic protections of foster parent background checks and training. DCYF also allows licenses to lapse without taking any additional steps to ensure that Plaintiff Children in homes with lapsed licenses are safe. The shortage of foster homes forces DCYF workers to make poor decisions when faced with a choice of, for example, whether to place a child in an unlicensed, unsafe home, or in an inappropriate institution. DCYF fails to monitor or support foster parents who are managing difficult and stressful situations involving the children they parent. DCYF also fails to provide the treatment and services necessary to ensure that children's behavior does not deteriorate in foster care. Instead of appropriately investigating and addressing abuse or neglect in foster placements, DCYF continues to rely on foster care settings known to pose a risk of harm to children. The high incidence of abuse or neglect in foster care is the predictable consequence of such conduct by Defendants.

B. Defendants Place Plaintiff Children in Homes and Institutions that Do Not Meet Their Needs and That Do Not Comply With Reasonable Professional Standards

1. Defendants Have Failed to Develop and Maintain a Sufficient Array of Foster Care Placements

133. In the Statewide Assessment that DCYF submitted in 2003 as part of its federal review, it admitted that it was "not able to assure that children are placed in the types of

placements that are the most family like and most appropriate for their individual needs, both at the time of initial entry and throughout their stay, because of a serious lack of foster family homes, resulting in demand for and use of all other types of placements. One of Rhode Island's critical needs is for a sufficient number and type of foster homes so that the first placement in foster care is an appropriate match. We all too often place a child in a less than ideal placement at the time of entry, which later increases the likelihood that a subsequent placement will need to be made."

134. DCYF's chronic shortage of a sufficient number and variety of placements is due, in part, to its failure to recruit, license, train, and support prospective foster parents. Further, under DCYF's current system, potential foster parents may have to wait for more than a year to be licensed by DCYF. The inadequate payments DCYF makes to foster parents to provide for children's room and board are another contributing factor. DCYF also has trouble retaining foster parents, in part because foster parents can feel ill-treated by the agency.

135. Because DCYF does not have enough suitable foster care placements, it typically places Plaintiff Children in the next available bed, regardless of whether that placement meets children's needs and regardless of whether they will receive adequate care and supervision. DCYF places children in homes or institutions specifically known to be mismatched to their needs, and often the first placement DCYF makes for a child, even an infant, is in a shelter, where a child can then linger for months.

2. Defendants Unnecessarily Place Children in Shelters and Institutions, Where They Stay for Too Long

136. Under federal law and reasonable professional standards, children taken into foster care custody must be placed in the least restrictive and most family-like environment possible, taking into account the child's particular needs. Most children need to live with

families and not in institutions. Nevertheless, DCYF places an extraordinary number of Plaintiff Children in group homes, emergency shelters, and other institutions, even when such placements are not warranted by children's individual needs. In FY 2004, the last period for which data are available, Rhode Island placed 36 percent of children in its foster care custody in group or institutional settings—almost twice the national average of 19 percent. The situation today is even worse. In February 2007, DCYF placed 29 percent of the children newly removed from their homes in shelters, and DCYF placed a total of 48 percent in group or institutional settings. Many remain in these inappropriate placements for months or years.

137. Because DCYF typically places children in the next available bed, many children in state foster care custody end up spending time in emergency shelters. DCYF's reliance on shelter placements results in multiple short-term placements, even for young children who suffer the most from this instability. Although emergency shelters are designed to be temporary placements lasting no more than 90 days, DCYF frequency exceeds this maximum, leaving children in emergency shelters for extended periods of time that can last a year or more. For example, Named Plaintiff David spent three months in a shelter when he was just four years old, and Named Plaintiff Cassie's sister spent over nine months in two shelters when she was six years old. Shelters are rarely, if ever, appropriate placements for children. They are not safe, nurturing, or healthy environments. Furthermore, it is far more expensive to maintain children in shelters than to maintain them with foster families.

138. Absent circumstances where children require specialized care, institutions do not meet children's developmental and emotional needs and can cause them trauma. Institutions are particularly damaging to infants and young children, causing a variety of harms, including: delayed language development; poor mental development and adaptive skills; an

increased risk of serious infectious illness; less stability; lower rates of adoption; and a greater likelihood of remaining in care.

139. Yet DCYF routinely places large numbers of infants and young children in institutions. In FY 2004, the last period for which data are available, DCYF placed 18.9 percent of children in its custody below the age of 12 in group and institutional settings, more than twice the national median of 8.3 percent in 2003, the last period for which data are available. Although even temporary placements in such settings are harmful to young children, it is not uncommon for young children in Rhode Island's foster care system to spend long stretches of time in group placements, such as Named Plaintiff Terrence, who lived in a residential treatment center from age six to age 12, four years longer than was therapeutically indicated. One four-year-old girl who was put in a group home for a 90-day placement ultimately spent a year in that facility before she was transferred to a therapeutic placement.

140. Paradoxically, suitable institutional settings for those children who could benefit from congregate care are often unavailable when needed. For example, the Rhode Island Supreme Court has recognized "the chronic shortage of adequate juvenile residential 'step-down' alternatives to psychiatric hospitalization." *In re Stephanie B.*, 826 A.2d 985, 990 (R.I. 2003). As the Court noted, DCYF has admitted to keeping children, such as Named Plaintiff David, hospitalized in mental health institutions even when medically unnecessary because it lacked suitable residential placements. Unnecessary confinement to a psychiatric hospital is dangerous and harmful to anyone, particularly a child.

3. Defendants Send Children in Foster Care Far from Their Homes and Communities

141. Both reasonable professional standards and DCYF policy require that children in foster care whose permanency goal is reunification be placed near their homes.

Removal from home and placement in foster care is inherently traumatic for children. Living in one's neighborhood minimizes that trauma by helping children maintain ties with parents and siblings and by avoiding unnecessary separation from friends, school, and local supports.

142. Nevertheless, DCYF sends most children in foster care to live in placements that are distant from their homes, schools, and communities. As of June 12, 2007, at least 47.71 percent of children in foster care were living in placements outside their home region. Though some children are placed out of their home region so they can live with relatives elsewhere in the state, the prevalence of out-of-region placements is directly tied to DCYF's failure to recruit and retain a sufficient array of suitable placements throughout the state. One child, whose family is already having difficulty visiting him in a remote in-state placement, was moved to an out-of-state facility because there is no facility in Rhode Island that can provide the required services.

143. Additionally, DCYF assigns caseworkers to children based on the region in which the children lived prior to entering foster care, not based on the region in which they are placed. As a result, many caseworkers are responsible for children who are placed in remote areas of the state. The need for caseworkers to travel to other regions to perform in-home visits, combined with their already unmanageable caseloads, means that many caseworkers cannot make the in-home visits necessary to ensure that children are safe and that their needs are being met. This leaves children who are placed remotely at even greater risk of being abused, neglected, or languishing in care without having their needs met.

4. Because Children Are Placed in Inappropriate Homes and Institutions, Their Placements Frequently Disrupt, and Children Deteriorate as They Are Moved from Place to Place

144. Reasonable professional standards provide that children in foster care should not be moved from one foster home or facility to another unless moving is in their best interests. Unnecessary moves increase the instability in the lives of children in foster care, often leading to attachment problems, defiance, and other mental health issues due to feelings of loss, rejection, and trauma. Research has shown that placement instability has a significant impact on children's behavioral well-being, in addition to the impact of the trauma caused by suffering abuse and neglect and being placed into foster care. For this reason, reasonable professional standards provide that agency staff, foster parents, and others involved in a child's care should "work actively to achieve stability of care with the foster family. . . . Proactive efforts should continually promote stability and avoid disruptions in foster care."

145. Children in Rhode Island foster care routinely experience multiple placements during their stays in state custody, largely because of inappropriate placements and Defendants' failure to deliver necessary services to support children in their placements. The 2004 federal review concluded that placement stability in Rhode Island was the area of "greatest concern." The CFSR found that during the review period, 31 percent of children whose cases were reviewed experienced multiple placement moves that were not in their best interests.

146. More recently, DCYF shuffles children from place to place, with even greater frequency. In FFY 2006, 14 percent of the 2,153 children who had been in out-of-home care for less than 12 months had already experienced three or more placements. Of those children who had been in care between 12 and 23 months, 33 percent had gone through three or more placements. And of those children who had been in care for more than 24 months, 67

percent had experienced three or more placements. According to DCYF, fully 24.2 percent of children in foster care experienced three or more placements during the 12 months leading up to March 31, 2006. Put another way, only 75.8 percent of foster children had two or fewer placements within the previous 12 months, far short of the national benchmark of at least 86.7 percent.

147. Although these data do not specify how many placements children experience beyond three, children often suffer far more than three placements during their time in foster care. One child had 15 placements over the course of only two years, with six occurring in a single 16-day period. Named Plaintiffs Alex and Jared have each experienced at least six placements in less than six years in foster care, and, in her 10 years in foster care, Named Plaintiff Tracy has been moved at least 18 times through at least 13 placements. There is a growing pool of two- and three-year-old children in foster care who are living in shelters and have already been through multiple placements, in some cases multiple adoptive placements, in their short lives.

148. The longer children remain in DCYF foster care, the more moves and disruptions they experience. These moves are directly due to Defendants' acts and omissions in failing to develop an adequate placement array, placing children in the first available bed rather than exercising reasonable professional judgment by basing placement decisions on the best interests of the children, and failing to assess children's needs and to deliver services to meet those needs.

149. Defendants' failure to provide placement stability to the children in their care causes harm to those children. Each new placement creates or exacerbates emotional trauma for children and results in behavioral, developmental, intellectual, and attachment

problems. Moving children through multiple homes and institutions also often disrupts their education by forcing them to move to new schools. It frays the ties between children in foster care and their parents and siblings, friends, and community.

5. Defendants Separate Siblings in Foster Care Because They Have Failed to Develop an Adequate Placement Array

150. Both reasonable professional standards and DCYF policy emphasize the importance of keeping siblings together when they are taken into foster care, unless one or more of the children has a serious need that justifies separation. Separating siblings should be the exception, not the rule.

151. However, the 2004 federal review found that in 25 percent of cases DCYF had failed to place children in foster care with all of their siblings when separation was not warranted by the individual children's safety or treatment needs. In some cases, sibling separation was "due to the agency not making concerted efforts to ensure that sufficient placement resources are available to accommodate siblings." In other cases, "insufficient efforts were made to ensure that siblings remained together." One child who entered care at age two with his two brothers has been separated from them during the entire twelve years they have been in DCYF custody. Named Plaintiffs Cassie, Alex, Jared, Terrence and Danny have all been separated from their siblings.

152. DCYF's practice of separating siblings who do not need to be separated results in needless harm to children. Sibling relationships are often the main source of stability in the life of a child in foster care and can be essential to minimizing the lasting ill effects of a child's time in state custody.

153. Defendants compound the harm of sibling separation by failing to ensure that siblings who are not placed together at least have regular and frequent visits with one

another. The CFSR concluded that “DCYF does not make sufficient efforts to ensure that . . . visitation between children and their parents and siblings in foster care is of sufficient frequency . . . [or that] children’s connections to their families are preserved.”

C. Defendants Fail in Their Duty to Meet Plaintiff Children’s Service Needs

1. Defendants Do Not Provide Plaintiff Children with Required Timely and Appropriate Assessments or Case Plans

154. When DCYF takes a child into foster care custody, it assumes a duty to provide services to meet the child’s basic needs, including his or her educational, medical, dental, and mental health needs. DCYF’s failure to provide services that meet the needs of Plaintiff Children results in very real harm to those children.

155. A critical first step in providing the services to meet an individual child’s basic needs is for a caseworker, in consultation with the child’s parents and other knowledgeable individuals, to prepare a case plan that identifies the child’s needs and permanency goal and that specifies the services that will be provided in order to meet those needs and achieve that goal. Federal law and DCYF policy both require that a case plan be timely prepared and that it include a description of the service requirements that have been identified for the child.

156. Nevertheless, DCYF does not have a system in place to assure the timely preparation of appropriate case plans. As of June 12, 2007, over 36 percent of the children managed by a Region II caseworker had either an expired case plan or no case plan at all. The figures for children in Regions I, III, and IV were 24.59 percent, 23.77 percent, and 21.46 percent, respectively. And even when case plans are timely prepared or updated, key players are often excluded from the planning process. For example, the 2004 CFSR found that DCYF fails to involve children (where appropriate) and parents in the case planning process.

157. Instead of services being delivered to children in accordance with a properly formulated plan, children generally receive services, if at all, only in response to immediate crises. In a report issued on April 27, 2007, a DCYF Financial Review Team commissioned by then-Rhode Island Governor Donald Carcieri commented that services “appear to be extremely reactive,” with decisions about the provision of services “made on [the basis of] availability.” “Often the exigencies of the day compel the practicum of ‘placement equals treatment,’” the Financial Review Team reported. When service needs are identified, children are often put on waiting lists without regard to the urgency of their needs, because of Defendants’ failure to develop an adequate service array for these children.

158. Because DCYF fails in its duty to identify the individual needs of children in state foster care custody and fails in its duty to provide services that meet those needs, children do not get their physical, dental, mental health, and educational needs met. Due to the basic nature of these needs, the damage to children is often irreversible.

2. Defendants Violate Plaintiff Children’s Rights to Timely and Safe Reunification with Their Families When Reunification Is Appropriate

159. Reasonable professional standards require that child welfare agencies pursue reunification as the first and preferred permanency outcome for the children they place in foster care. Where safe reunification is a reasonable possibility, DCYF is required to develop and implement a case plan and a family services plan for each child and family in order to achieve family reintegration as soon as reasonably possible.

160. DCYF does not meet its obligation to facilitate appropriate and timely reunifications. The 2004 Child and Family Services Review found that only 66.2 percent of children who were reunified with their parents had achieved reunification within 12 months of initial removal, compared to the national norm of at least 76.2 percent.

161. The chronic failure of DCYF to achieve timely and appropriate reunifications is the direct result of a combination of known and preventable shortcomings. First, DCYF fails to exercise reasonable professional judgment in deciding whether it is appropriate and in the individual child's best interests to attempt reunification in the first place. Second, DCYF fails to make timely and appropriate assessments of the services children and families will need in order for reunification to succeed. Third, basic reunification support services for parents, such as parenting classes and substance abuse counseling and treatment, are in short supply and often subject to long waiting lists. Fourth, even when reunification support services are provided, they typically begin only after the child has already been returned to the home; little or nothing is done to create the conditions for successful reunification in advance of the child's return home. Fifth, the services, even when provided, are inadequate to sufficiently support parents with the demands and stresses of parenting emotionally and behaviorally challenged children. And finally, high worker caseloads preclude the regular parent-child visits needed to support the reunification process, since visits must generally be arranged and supervised by a caseworker.

162. Reasonable social work practice and DCYF policy require that regular visits between parents and their children in foster care occur in order to successfully reunify the parent and child. DCYF requires parent-child visits to occur once every two weeks, unless specific exceptions relating to the safety and well-being of the child apply. However, as of June 12, 2007, in Region II, only 24.69 percent of children had seen their parent or parents within the preceding 30 days. In Regions I, III, and IV, the numbers were 39.66 percent, 46.20 percent, and 40.41 percent, respectively. These low rates of visitation are partly the consequence of DCYF's practice of routinely placing Plaintiff Children outside their home region. Out-of-region foster

care placements make it extraordinarily difficult for many biological parents to visit regularly with their children and to sustain the connections on which successful reunification depends.

163. When parent-child visits do occur, they often take place without DCYF supervision, even where required. DCYF's failure to supervise parent-child visits when such supervision is mandated poses unacceptable risks for the children that DCYF is duty-bound to protect.

164. DCYF also fails to determine what services are necessary to support safe reunification and then fails to provide those services. This sets families up for failure, subjects children to additional abuse or neglect by parents who are unprepared for reunification, and results in children being removed again and placed back in state foster care custody.

3. Defendants Violate Plaintiff Children's Rights to Permanency by Pursuing Reunification with Parents When Not Appropriate

165. As a matter of practice, DCYF usually does not consider alternatives to reunification for at least the first 15 months that a child spends in foster care custody, regardless of whether reunification is an appropriate goal for the individual child. Often DCYF maintains the goal of reunification for children for significantly longer periods of time. In one instance, a child who entered foster care less than a month after birth remained in foster care for almost three years because DCYF refused to seek a permanent adoptive home for the child, notwithstanding the clear unwillingness of the child's parents to take the child back. Another child's permanency goal remains reunification, even though she has lived in a foster home for 8 years and is now 10 years old.

166. One principal reason why children in Rhode Island remain in foster care for many years with the nominal goal of reunification is that Defendants allow parents to be noncompliant or minimally compliant with reunification case plans for years, even in the face of

obvious evidence that parents will never complete their case plans and will never be able to handle the responsibilities of parenting. Defendants do not abandon the ostensible goal of reunification even in cases where the parents' rights to their multiple other children have already been terminated, such as in the case of Named Plaintiffs Alex, Jared and David; where the parents do not visit their children, such as in the case of Named Plaintiff Danny; and where the parents have made no discernible effort to complete the requirements of their reunification plans, such as in the case of Named Plaintiffs Alex and Jared.

167. DCYF frequently returns children home even when it is not in that child's best interest to do so, in part because of the scarcity of foster homes in the state.

168. Inappropriate reunification is unsafe and is likely to be unsuccessful, often leading to another removal of the child from his or her home. One girl was reunified with her abusive mother five times, each time suffering a new episode of physical abuse, followed by another removal.

169. Of the children who DCYF removed into foster care between April 1, 2005, and March 31, 2006, fully 15.2 percent had been in foster care within the 12 months prior to their removal. This 12-month re-entry rate—nearly twice the national standard of 8.6 percent set by the federal government—is concrete evidence of the systemic pattern of poor DCYF decision-making with regard to whether a family is ready and able to keep a child who will be reunified safe and well. DCYF returns children to their parents in cases where it is clearly inappropriate and dangerous to do so.

4. Defendants Fail to Timely Place Children Who Cannot Return Home with Permanent Adoptive Families, Allowing Them Instead to Languish in Foster Care

170. Reasonable professional standards emphasize that the primary purpose of foster care is to provide children with protection, care, and nurturing for a limited period of time only. By definition, foster care should be a temporary arrangement. Reasonable professional standards and federal law both require that when children in foster care cannot be safely reunited with their parents, they must be freed for adoption without delay and not left lingering in foster care indefinitely. Federal law requires child welfare agencies to file a petition to terminate the parental rights of a child's parents, and to concurrently pursue the goal of adoption, if the child has been in state foster care custody for 15 of the most recent 22 months, unless certain exceptions are documented.

171. Indeed, then-DCYF Director Patricia Martinez told the Rhode Island Senate Committee on Health and Human Services on December 13, 2006, "It's a moral responsibility of us in the Department" to develop alternative permanency plans for children who cannot be reunified with their parents. Former Director Martinez conceded: "Children are staying in the system too long. . . . Many of these children don't go home."

172. For children to be adopted, prospective adoptive parents must be recruited, screened, trained, and licensed. DCYF's efforts in all these areas are deficient and ineffective. For example, DCYF placed a moratorium on trainings for prospective adoptive parents in 2007. Thus, even when DCYF recruits people interested in adopting children in its custody, its failure to follow through with training and licensing in a timely manner negates its success in recruitment.

173. Adoptions are also prevented or hindered by DCYF's failure to provide an adequate adoption subsidy for children with special needs, as required by Rhode Island law. Under federal law, adoption subsidies may not exceed the child's monthly foster care maintenance payment at the time of the adoptive placement. DCYF at times reduces the foster care maintenance payment for children living with families that are ready to adopt them, in order to reduce or eliminate the adoption subsidy after adoption is finalized. Often, the failure to provide an adoption subsidy makes the adoption unfeasible for the family and sets the child up for another failed placement and further instability.

174. Adoptions are also delayed because DCYF fails to finalize adoptions in a timely manner. It is common to wait many months just for the "home study" of an adoptive home to take place. One adoption was not finalized for three years, long after the child had been freed for adoption.

175. Further delays result from Defendants' failure to engage in concurrent planning, the process of searching for potential adoptive families while simultaneously working towards family reunification, as required by federal law and reasonable professional judgment. DCYF's continued pursuit of reunification for families even after it has become obviously inappropriate delays children from moving to permanent homes, and this delay is only exacerbated by DCYF's failure to plan for adoption concurrently.

176. Defendants have not effectively trained caseworkers to implement adoption policies. Even when DCYF caseworkers follow procedure and make sure that a child has been freed for adoption, they often fail to refer the child to the Adoption Unit, effectively putting the child in limbo until the case is rediscovered, often months later.

177. Because of all these systemic failings, children who cannot be safely reunited with their families commonly spend years in foster care without DCYF making any progress toward finding a safe and appropriate adoptive home for them. Eventually DCYF disclaims its responsibility to find permanent homes for them by declaring that they have been in care for too long to be “adoptable,” such as with Named Plaintiff David. Rather than pursuing individualized adoption strategies for these children, DCYF leaves them to languish in foster care.

5. Defendants Violate Plaintiff Children’s Health Care Rights

178. By taking Plaintiff Children into foster care custody, Defendants assume the duty to provide for their medical, dental, and mental health needs. Despite this clear duty, the 2004 CFSR concluded that “DCYF was not consistently effective in meeting children’s physical and mental health needs.” In nearly a quarter of applicable cases, DCYF had not made concerted efforts to address children’s physical health needs. DCYF’s failure to address children’s mental health needs was even starker: “in 39 percent of the applicable cases, reviewers determined that DCYF had not made concerted efforts to address the mental health needs of children.” The CFSR Final Report noted “particular concern” with respect to the mental health needs of children, finding that DCYF often “did not respond appropriately in situations in which presenting or underlying issues warranted a mental health assessment and/or mental health services.”

179. As victims of abuse or neglect, children entering foster care often have experienced significant trauma, resulting in physical, emotional, or behavioral issues that require medical or mental health treatment. Thus, reasonable professional standards require initial health screenings for all children when they enter foster care. Those screenings should include

assessments of mental health issues that are common among children in foster care, including depression, risk of suicide, severe behavioral problems, serious emotional disturbance, and substance abuse. Reasonable professional standards also require that each child have a service plan that includes treatment for any conditions diagnosed in these assessments and that access to such treatment is assured.

180. Although Defendants have made efforts to build a medical care infrastructure that will meet the needs of all Plaintiff Children, including the enrollment of children in foster care in the state's managed-care program, RIte Care, insufficient coordination and integration among children's health services and family preservation programs, poor case planning, and poor worker visitation render these efforts ineffective for many children.

181. For example, the "Baseline Oral Health Indicators" report prepared for the Rhode Island State Action for Oral Health Access Project in April 2005 determined that, "of the approximately 889 children ages 3 and over who were living in licensed foster homes and who had RIte Care coverage in 2004, 714 (80.3 percent) were reported by their foster parents to have needed dental care" and "239 (33.5 percent) of these children had problems obtaining dental care." Rhode Island dentists commonly refuse the fee-for-service Medicaid and RIte Smiles dental coverage that DCYF provides to children in its foster care custody. Defendants' systematic failure to ensure that children in foster care have their dental needs met is the direct result of Defendants' actions and inactions in failing to develop an adequate array of dental service providers.

182. The need for mental health services for children in DCYF foster care custody is particularly great. "There has never been a time when more kids had mental health needs that need to be addressed," Associate Justice Michael B. Forte of the Rhode Island Family

Court told the Rhode Island House Finance Committee on April 4, 2007, during hearings on the FY 2008 budget for DCYF. “Numerous studies and recommendations have called on the department [DCYF] to institute a better coordinated and managed approach to the behavioral health needs of children,” the Rhode Island Senate declared in a March 22, 2007, resolution. This resolution came almost three years after the federal review that found that Rhode Island was not making concerted efforts to meet the mental health needs of children in foster care. That need continues to go unaddressed due to Defendants’ actions and inactions in failing to develop an adequate array of mental health providers who will treat children in foster care throughout Rhode Island.

183. The absence of an adequate mental and behavioral health delivery system for Rhode Island’s foster care population was well-documented in the “Rhode Island Mental Health National Outcome Measures” for 2005, issued by the federal Center for Mental Health Services. That year, only 148 children residing in family foster homes and 125 children residing in institutions received state-supplied mental health services. These low figures, the most recent available, mean that DCYF regularly fails to meet the serious and pervasive mental health needs of the children in its foster care custody. For example, one 15-year-old Plaintiff Child who is slightly mentally retarded never received any mental health counseling after she was sexually molested by her stepfather. Two years later, she was sexually reactive. Although she has not received any therapeutic treatment for these problems, DCYF plans to reunify her with her biological father and five brothers. Other children, such as Named Plaintiffs Terrence, Tracy and Danny, deteriorate while in care because of DCYF’s failure to provide adequate mental health services.

184. Foster parents report that DCYF is unresponsive to their efforts to obtain necessary mental and physical health care services for the children they foster, encountering such resistance and even hostility from DCYF that they have begun to fear retaliation if they do not limit their demands on behalf of the children they foster. The failure of DCYF to provide needed medical and mental health care for Plaintiff Children sometimes leads foster parents to go outside the system in an attempt to obtain those services on their own for the children they foster. When DCYF refused one foster parent's request for an evaluation of a Plaintiff Child with autistic tendencies, the foster parent had to obtain an independent evaluation of the child. That outside evaluation led to a diagnosis of Asperger Syndrome.

185. DCYF also fails to make sure that Plaintiff Children's medical records follow them from place to place and fails to inform foster parents about the mental health and other medical histories of the children they foster. As a result, caregivers are unable to help ensure that the needs of children in foster care are met. Failing to inform foster parents about mental health issues, particularly those due to a child's having been sexually abused or involving a child's propensity for violence, also puts children in foster care and members of foster families at risk.

D. Defendants' Mismanagement of Rhode Island's Foster Care System Harms Plaintiff Children

1. Defendants Assign Excessive Caseloads to Caseworkers, Making It Impossible for the Caseworkers to Ensure That Children Are Safe and Having Their Needs Met

186. No child welfare system can perform its basic functions without a well-trained, substantially experienced, adequately staffed, and appropriately evaluated workforce. When, as is the case in Rhode Island, caseworkers are inadequately trained, experienced, reviewed, or supervised, or when they are overburdened by unmanageable caseloads, a child

welfare system predictably breaks down and children suffer reasonably foreseeable harms as a result.

187. Because of the vital role played by caseworkers, reasonable professional standards prescribe caseloads of between 12 and 15 children per worker for foster care services and between 10 and 12 children per worker for adoption services. Reasonable professional standards also prescribe supervisory ratios of one supervisor for every five caseworkers.

188. In disregard of these reasonable professional standards, DCYF policy sets the target caseload cap at 14 families (each of which may have more than one child) per worker for foster care services, with an absolute maximum of 28 children—nearly twice the professional standard. In practice, however, DCYF caseworkers consistently carry caseloads well in excess of 14 families or 28 children. Currently, individual caseloads for foster care workers greatly vary in size, with many exceeding 30 children and some even exceeding 40 children.

189. Caseworkers carry such unmanageable caseloads simply because Defendants do not employ enough caseworkers to adequately serve all the children that DCYF takes into foster care custody. This has been clear for years. In its 2003 Statewide Assessment, DCYF admitted that “[t]he current level of vacancies across all line staff positions is the most severe that the Department has experienced for many years. As we seek to comply with [applicable] performance measures to achieve conformity, we will be hard pressed to change existing practices and/or implement new practice with an already overburdened staff.”

190. On December 13, 2006, then-DCYF Director Martinez acknowledged in testimony to the Rhode Island Senate Health and Human Services Committee, that DCYF faces staff shortages and high turnover among its child welfare caseworkers. Former Director Martinez further advised the committee that 31 caseworker positions had been eliminated by the

General Assembly in the FY 2007 budget cycle. She also told the committee that 37 social caseworkers had left DCYF since July 2006.

191. At times, the turnover rate among caseworkers has been as high as 40 percent. High caseworker turnover requires those remaining on staff to carry additional cases on their already overflowing caseloads to cover for the vacancies. A rapid exodus of caseworkers in Region IV recently has meant that caseworkers in Regions II and III have had to take over the cases of Plaintiff Children in Region IV. Assigning the cases of children in foster care in one region to overburdened caseworkers in another part of the state makes it that much more difficult for those children to receive caseworker visits and have their needs met.

192. Caseworkers are demoralized and frustrated by their inability to do their job because of staggering caseloads and endless paperwork. “The reality is that as the situation stands now, even if one is good at this work, it is impossible to do well. When you cannot do this job well, children and their families suffer,” DCYF caseworker Pamela McElroy told the Rhode Island Senate Health and Human Services Committee in December 2006. McElroy told the committee that after six years she had decided to leave her job at DCYF because of her heavy caseload. “The constant feeling that I am letting families down and that there is no relief in sight is my breaking point,” she said. Former DCYF caseworker John Campopiano expressed similar frustrations in a televised interview on February 25, 2007, and stated that “it’s absolutely impossible” to perform proper quality casework at existing DCYF caseload levels. Mr. Campopiano carried a caseload of 40 families—and far more individual children—before recently resigning his position out of frustration and burnout.

193. In a November 6, 2006 letter to then-DCYF Director Martinez, 42 supervisors from the DCYF Family Services Unit—the unit charged with providing social

services and case management for children in foster care—warned that caseloads in their unit were rising so rapidly that they feared for the safety of children in DCYF foster care custody. The 42 signatories told former Director Martinez that it was “imperative” that she immediately fill all social caseworker vacancies and restore Family Services Unit positions that had been eliminated.

194. Thereafter, on November 22, 2006, then-Governor Carcieri received a letter from the Rhode Island Children’s Policy Coalition² that made reference to the above November 6, 2006, letter to former Director Martinez, stating, “[i]t is an extraordinary indicator of the depth of the problems and the lack of progress at [DCYF] that supervisory staff feel compelled to collectively put into writing their concern for the safety of the children being served by the Department.” The letter urged the former governor “to make child safety a priority by taking whatever steps are necessary within the state personnel system to insure that staffing at [DCYF] is adequate and vacancies filled in a timely manner.”

195. Despite the urgent need to restore the caseworker positions that have been eliminated and to hire new caseworkers in order to bring caseloads down to manageable levels, Defendants failed to seek funding for a single additional caseworker position in their FY 2008 budget requests.

2. Caseworkers Fail to Make Required Child Visits

196. Regular caseworker visits are necessary for checking on a child’s safety and well-being, identifying the child’s needs, and arranging and monitoring the delivery of services to meet those needs. That is why DCYF policy requires the caseworkers to meet “face-to-

² The Children’s Policy Coalition is a child welfare policy and advocacy organization whose membership includes almost every significant private child placing agency and children’s services provider in Rhode Island.

face. . . at least monthly” with the Plaintiff Children on their caseloads and with those children’s caregivers, and to visit foster homes at least monthly.

197. Nevertheless, the 2004 Child and Family Services Review found that fully 39 percent of children in Rhode Island’s foster care system were not receiving adequate face-to-face visits from their caseworkers. Recent data show that this problem has considerably worsened. As of June 12, 2007, 75.31 percent of children in Region II had not received face-to-face caseworker visits within the last 30 days. The figures for children in Regions I, III, and IV were 60.34 percent, 53.8 percent, and 59.59 percent, respectively. Statewide, 60.94 percent of all children in foster care had not received a face-to-face caseworker visit within the last 30 days.

198. Worse still, as of June 12, 2007, 43.28 percent of Plaintiff Children in Region II had not had a caseworker visit within the last 90 days. On this measure, the figures for children in Regions I, III, and IV were 34.87 percent, 25.23 percent, and 27.25 percent. Statewide, 31.75 percent of all children in foster care had not received a face-to-face caseworker visit within the last 90 days.

199. As bad as they are, these percentages do not tell the whole story. One child had only a single visit with his DCYF caseworker during a three-year period. Named Plaintiff David had only one visit annually with his caseworker during 2004 and 2005, and only 10 visits during the previous three years. Some foster parents report that they have not seen a caseworker in over a year. When caseworkers do visit children in foster care, it is often because the foster parents request the visits and drive the children to a designated meeting place, rather than the caseworkers initiating the visits and going to the foster homes themselves. Foster parents report experiencing great difficulty contacting DCYF caseworkers. Caseworkers do not answer their

telephones or return calls and their voicemail boxes are frequently full, unable to accept more messages.

200. With such low caseworker-child visitation rates, it is simply impossible for DCYF to ensure that the children in its foster care custody are safe and that their basic needs are being met. Indeed, as the persistently high rates of abuse in care show, children in foster care in Rhode Island are not safe. Nor are their basic needs for things such as mental health care consistently met. The harmful and dangerous situation in which children in foster care find themselves is the direct result of DCYF's failure to ensure that caseworkers regularly visit them.

3. The DCYF Licensing Unit Fails Applicable Standards, Resulting in a Chronic Shortage of Licensed Placements and Providers

201. DCYF has established a Licensing Unit charged with (1) processing applications submitted by prospective foster parents and foster care providers seeking licensure to furnish foster care services in Rhode Island, (2) ensuring that DCYF-licensed family foster homes, group homes, and institutions where children are placed for foster care services comply with minimum state safety requirements, and (3) responding to reports of licensure or regulatory violations involving DCYF-authorized family foster homes, group homes, or institutions.

202. Rhode Island statute provides that no non-kin foster care provider may furnish care for a child without holding a valid, current license. To secure a license in Rhode Island, the foster care provider must satisfy a set of mandatory eligibility requirements that include undergoing a criminal background check, a home safety study, training and orientation as a caretaker, and a medical clearance.

203. To be caregivers of children in DCYF custody, relatives must be certified, which involves meeting essentially the same standards as required to be a licensed foster parent. Yet in the aftermath of T.J. Wright's death in 2005, a DCYF official candidly admitted that

“[i]t’s not uncommon to see a child placed in the care of relatives while the licensing [i.e., certification] process is ongoing.” The dangerous practice of placing children in relative homes while certification is pending continues. For example, Named Plaintiff Danny was placed in the unlicensed home of his great-grandmother, without DCYF conducting a safety and background check.

204. A properly administered licensing process would enable DCYF to screen out potentially unsafe or unsuitable foster care providers. However, the DCYF licensing workforce is inadequately trained, severely understaffed, and responsible for onerous caseloads. There are only six full-time licensing caseworkers in the Licensing Unit, and they are responsible for all aspects of foster care as well as day care licensing throughout the state. The caseworkers carry caseloads regularly exceeding 200 cases per worker. As a result, the licensing process for a non-kin foster home currently takes more than a year.

205. The licensing staff maintains a chronic backlog of hundreds of license applications. This backlog exists even though DCYF does not have enough foster homes to meet current needs. The backlog persists not only because the Licensing Unit is understaffed but also because Licensing Unit workers are not subject to any system of worker accountability. Because these workers are not subject to performance reviews, they are under no meaningful pressure to catch up with the licensure backlog.

206. As of March 2007, the Licensing Unit had a backlog of 423 licensing applications, most of which—295—were for homes that had children in foster care living in them despite their unlicensed status. This means approximately 10 percent of all children in DCYF foster care custody were living in unlicensed homes. In May 2007, 233 children in DCYF foster care custody were living in 164 unlicensed foster homes. Placing hundreds of

children in unlicensed homes is not only a departure from the established licensing process in Rhode Island and from basic notions of good practice, it constitutes a fundamental failure to assure children's safety.

207. The Licensing Unit is also charged with the licensure of the child placing agencies with which DCYF contracts for the provision of foster care services and placements such as independent living arrangements, supervised apartment living, residential group care facilities, family foster homes, and adoptive homes. As of June 12, 2007, only 69 percent of the child placing agencies in Rhode Island had active licenses; the rest had expired or pending licenses. By continuing to use child placing agencies that are not properly licensed, DCYF exposes children in foster care to unnecessary and unacceptable risks.

208. DCYF also does not provide the oversight necessary to ensure that licensed homes remain safe and appropriate for children. In the case of one foster home from which DCYF had previously removed Plaintiff Children, when the foster parent began experiencing mental health problems and refused to make use of available services for Plaintiff Children, DCYF did not revoke the foster parent's license. Instead, DCYF simply reduced the allowable number of children in the home from three to two, and subsequently placed two children in that home.

E. Defendants' Fiscal Mismanagement of the Child Welfare System Harms Children

209. DCYF is required by state law to seek, accept, and take advantage of all available federal aid. Nevertheless, Defendants fail to take advantage of available federal funding for foster care, leaving the child welfare system needlessly underfunded. Defendants then spend too much of Rhode Island's limited child welfare funds on expensive institutional placements for children who do not need institutionalization, while at the same time inadequately

reimbursing the foster parents who provide the family placements that most children in foster care need. This fiscal mismanagement results in harm to Plaintiff Children.

1. Defendants Forfeit Available Federal Funds

210. Defendants forfeit millions of dollars in federal matching funds by failing to collect Title IV-E funds for eligible children.³ Rhode Island is entitled to receive federal dollars to offset the costs of maintaining abused and neglected children in foster care, as long as the state complies with certain requirements. One requirement that Defendants routinely fail to meet is ensuring that children are placed in licensed foster care settings. Then-Governor Carcieri admitted in his FY 2008 budget proposal for DCYF that the State would forfeit \$1.5 million in federal funds for the coming year simply because of Defendants' widespread use of unlicensed placements. This forfeiture of available federal funding is one reason why Rhode Island's child welfare system is underfunded and unable to protect children in foster care or provide for their basic needs.

211. In FFY 2000, Rhode Island received Title IV-E reimbursements for 31.9 percent of the children in DCYF foster care custody. By FFY 2004, the last year for which data are available, that figure had fallen to only 16.8 percent. In contrast, the national mean that same year was 46.43 percent.

2. Defendants Waste Limited Funds on Harmful, Costly Institutional Placements

212. DCYF makes excessive use of expensive placements such as institutions, group homes, and emergency shelters for children who do not need them, rather than developing and supporting an adequate array of appropriate foster homes and specialized foster homes, such

³ To receive federal funding under Titles IV-B and IV-E of the Social Security Act, Rhode Island has entered into contracts with the federal government, known as "State Plans," under which the State agrees to provide child welfare, foster care, and adoption services to children in foster care in accordance with specific state and federal statutes, regulations, and policies as a condition for receiving federal funds.

as therapeutic, behavioral, or medical foster homes. Institutional placements are inappropriate for all children except the minority of children who have special circumstances that are best addressed in an institutional setting. And shelters are categorically inappropriate placements for all children.

213. Not only do institutional placements harm children who do not need them, they are not cost effective. Most children are best cared for in standard foster homes, but those children whose special needs preclude placement in regular foster homes can often have their needs met in a family-like setting by therapeutic foster care providers for a fraction of the cost of institutional care. Therapeutic foster care providers in Rhode Island receive on average \$123 per day, compared to an average daily cost of \$245 per day for in-state institutional care and \$353 for out-of-state institutional care.

214. Defendants' reliance on institutional placements translates directly into fewer dollars available for ensuring that children in foster care are safe and that their needs are being met in the least restrictive, most family-like setting that is appropriate to their needs.

3. Defendants Do Not Provide Adequate Foster Care Maintenance Payments to Foster Parents

215. To comply with federal law and reasonable professional standards, DCYF must pay maintenance payments to family foster care providers that cover the costs associated with caring for children in foster care, including "payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation." By these standards, the maintenance payments that Defendants pay foster parents are inadequate.

216. The standard daily board rates paid to foster parents by DCYF are \$14.39 for children up to 3 years of age, \$13.64 for children between 4 and 11 years old, and \$15.79 for children ages 12 and older. These rates are less than half what the United States Department of Agriculture estimates the average middle-income, two-parent family in the urban Northeast spent to care for children in 2006 (not including health care costs). The USDA estimates, for example, that such families spend \$34.92 per day on 2-year-olds, \$35.54 on 9-year-olds, and \$38.83 on 16-year-olds. If anything, the USDA underestimates the cost of caring for a child.

217. This disparity translates into harm and risk of harm to Plaintiff Children, since financially overburdened foster parents are less able to provide proper care. It also drives away potential foster parents, thus placing a greater burden on the limited array of foster family homes and contributing to the high rate of needless and harmful institutionalization of children in foster care.

VIII. Causes of Action

First Cause of Action

(Substantive Due Process Under the United States Constitution) (Asserted by All Named Plaintiffs and Plaintiff Children)

218. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

219. A state assumes an affirmative duty under the Fourteenth Amendment to the United States Constitution to protect a child from harm when it takes that child into its foster care custody.

220. The foregoing actions and inactions of Defendants, in their official capacities, constitute a failure to meet the affirmative duty to protect from harm all Named Plaintiffs and class members, which is a substantial factor leading to, and proximate cause of, the

violation of the constitutionally protected liberty and privacy interests of all Named Plaintiffs and class members.

221. The forgoing actions and inactions of Defendants, in their official capacities, constitute a policy, pattern, practice, or custom that is inconsistent with the exercise of reasonable professional judgment and amounts to deliberate indifference to the constitutionally protected rights and liberty and privacy interests of all Named Plaintiffs and class members. As a result, all Named Plaintiffs and class members have been and are at continuing risk of being harmed and deprived of the substantive due process rights guaranteed by the Fourteenth Amendment to the United States Constitution.

222. These substantive due process rights include, but are not limited to: the right to protection from unnecessary harm while in government custody; the right to a living environment that protects Plaintiff Children's physical, mental, and emotional safety and well-being; the right to services necessary to prevent Plaintiff Children from deteriorating or being harmed physically, psychologically, or otherwise while in government custody, including but not limited to the right to safe and secure foster care placements, appropriate monitoring and supervision, appropriate planning and services directed toward ensuring that the child can leave foster care and grow up in a permanent family, and adequate medical, dental, psychiatric, psychological, and educational services; the right to treatment and care consistent with the purpose of the assumption of custody by the Department of Children, Youth and Families; the right not to be maintained in custody longer than is necessary to accomplish the purposes of taking the child into custody; the right to receive care, treatment, and services, determined and provided through the exercise of accepted, reasonable professional judgment; and the right to be placed in the least restrictive placement according to a Plaintiff Child's needs.

Second Cause of Action

**(Substantive Due Process Under the United States Constitution: State-Created Danger)
(Asserted by All Named Plaintiffs and Plaintiff Children)**

223. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

224. Defendants' acts of removing Plaintiff Children from their caretakers and placing them in placements that Defendants know or should know pose an imminent risk of harm to these children constitute to a policy, pattern, practice, or custom that is inconsistent with the exercise of professional judgment and that amounts deliberate indifference to the constitutionally protected rights and liberty and privacy interests of all Named Plaintiffs and class members. As a result, all Named Plaintiffs and class members have been and are at continuing risk of being deprived of the substantive due process rights guaranteed by the Fourteenth Amendment to the United States Constitution. 42 U.S.C. § 1983.

225. Likewise, Defendants' acts of returning Plaintiff Children to their parents when Defendants know or should know that doing so poses an imminent risk of harm to these children constitute to a policy, pattern, practice, or custom that is inconsistent with the exercise of professional judgment and that amounts deliberate indifference to the constitutionally protected rights and liberty and privacy interests of all Named Plaintiffs and class members.

226. As a result, all Named Plaintiffs and class members have been and are at continuing risk of being harmed and deprived of the substantive due process rights guaranteed by the Fourteenth Amendment to the United States Constitution. 42 U.S.C. § 1983.

Third Cause of Action

**(First, Ninth, and Fourteenth Amendments to the United States Constitution)
(Asserted by All Named Plaintiffs and Plaintiff Children)**

227. Each and every allegation of the Complaint is incorporated as if fully set forth herein.

228. The foregoing actions and inactions of the Defendants, in their official capacities, amount to a policy, pattern, practice, or custom of failing to exercise reasonable professional judgment and of deliberate indifference to Plaintiffs' constitutional rights, and are the cause of the violation of such rights. As a result of Defendants' conduct, all Named Plaintiffs and class members have been and are being severely harmed and deprived of the liberty interests, privacy interests, and associational rights not to be deprived of a child-parent or a child-sibling family relationship, guaranteed by the First, Ninth, and Fourteenth Amendments to the United States Constitution.

Fourth Cause of Action

**(The Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 670 *et seq.*)
(Asserted by All Named Plaintiffs and Plaintiff Children)**

229. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

230. As a result of the foregoing actions and omissions by Defendants, in their official capacities, Defendants are engaging in a policy, pattern, practice, or custom of depriving all Named Plaintiffs and class members of rights conferred on them by the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 670 *et seq.* (collectively the "Adoption Assistance Act"), and the regulations promulgated thereunder, 45 C.F.R. §§ 1355–57. These rights include: the right to timely written

case plans containing mandated elements and the right of each Plaintiff Child to foster care maintenance payments paid to the foster parents or foster care providers with whom the child is placed that cover the actual cost of (and the cost of providing) the Plaintiff Child's food, clothing, shelter, daily supervision, school supplies, reasonable travel to visitation with family, and other expenses. 42 U.S.C. §§ 671(a)(1), 671(a)(11), 671(a)(16), 672(a)(1), 675(4)(A); 45 C.F.R. §§ 1355.20, 1356.21(f)-(g), 1356.21(m)(1).

IX. Prayer for Relief

231. WHEREFORE, the Plaintiff Children respectfully request that this Honorable Court:

- a. Assert jurisdiction over this action;
- b. Order that Plaintiff Children may maintain this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
- c. Declare unconstitutional and unlawful pursuant to Rule 57 of the Federal Rules of Civil Procedure:
 - i. Defendants' violation of Plaintiff Children's rights under the Substantive Due Process Clause of the Fourteenth Amendment to the United States Constitution;
 - ii. Defendants' violation of Plaintiff Children's rights under the First, Ninth, and Fourteenth Amendments to the United States Constitution; and
 - iii. Defendants' violation of Plaintiff Children's rights under the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 670 *et seq.*
- d. Permanently enjoin Defendants from subjecting Plaintiff Children to practices that violate their rights;
- e. Order appropriate remedial relief to ensure Defendants' future compliance with their legal obligations to Plaintiff Children;

- f. Award to Plaintiff Children the reasonable costs and expenses incurred in the prosecution of this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. §§ 1920 and 1988, and Federal Rules of Civil Procedure 23(e) and (h); and
- g. Grant such other and further equitable relief as the Court deems just, necessary and proper to protect Plaintiff Children from further harm by Defendants.

DATED: February 24, 2012

Respectfully Submitted:

/s/ Shirim Nothenberg
MARCIA ROBINSON LOWRY (Bar No. 1187053 (NY);
admitted pro hac vice)
SHIRIM NOTHENBERG (Bar No. 2871846 (NY);
admitted pro hac vice)
CHILDREN'S RIGHTS
330 Seventh Avenue, Fourth Floor
New York, NY 10001
Phone: (212) 683-2210
Facsimile: (212) 683-4015
Email: mlowry@childrensrights.org

JAMETTA O. ALSTON (Bar No. 3909)
9 Columbia Avenue
Warwick, RI 02888
Phone: (401) 941-9595
Email: Jametta.Alston4@gmail.com

JOHN W. DINEEN (Bar No. 2346)
305 South Main Street
Providence, RI 02903
Phone: (401) 223-2397
Facsimile: (401) 223-2399
Email: jwdineen1@yahoo.com

JARED BOBROW (Bar No. 133712 (Cal.); *admitted pro
hac vice*)
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA
Phone: (650) 802-3034
Facsimile: (650) 802-3100
Email: jared.bobrow@weil.com

CERTIFICATION OF FILING AND SERVICE

I hereby certify that on February 24, 2011, I electronically filed the foregoing document with the United States District Court for the District of Rhode Island, and it is available for viewing and downloading from the ECF system for all counsel of record. I further certify that on this day I caused to be served, via ECF and U.S. Mail, a copy of said document to the attorneys of record listed below:

Via ECF:

James R. Lee, Esq.
Assistant Attorney General
R.I. Department of the Attorney General
150 South Main Street
Providence, RI 02903-2907
Tel: (401) 274-4400
Fax: (401) 222-2995
jlee@riag.ri.gov

Brenda D. Baum, Esq.
Assistant Attorney General
Rhode Island Department of the Attorney
General
150 South Main Street
Providence, RI 02903-2907
Tel: (401) 274-4400 x 2294
Fax: (401) 222-3016
bbaum@riag.ri.gov

Kevin Aucoin, Esq.
DCYF Chief Legal Counsel
101 Friendship Street
Providence, RI 02903-3716
Tel: (401) 528-3570
Kevin.Aucoin@dcyf.ri.gov

Via U.S. Mail:

Jane Morgan, Esq.
R.I. Department of Mental Health,
Retardation and Hospitals
Barry Hall
14 Harrington Rd.
Cranston, RI 02920
Tel: (401) 462-6014
Fax: (401) 462-2330

/s/ Shirim Nothenberg
SHIRIM NOTHENBERG (Bar No. 2871846 (NY);
admitted pro hac vice)
CHILDREN'S RIGHTS
330 Seventh Avenue, Fourth Floor
New York, NY 10001
Phone: (212) 683-2210
Facsimile: (212) 683-4015
Email: snothenberg@childrensrights.org