

**NATIONAL CENTER FOR YOUTH LAW**

**FOSTER CARE REFORM  
LITIGATION DOCKET  
2000**

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## Introduction

The Foster Care Reform Litigation Docket provides basic information on child welfare reform cases that are currently pending or completed. The 2000 version of the Docket also includes a small sampling of interesting damages cases. Each case summary contains identifying information and citations, names and addresses of counsel, brief summaries of the issues raised by the case, its procedural history and current status, and a list of key documents filed in the case.

The abbreviation "AACWA" is used throughout the Docket to refer to the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272. Citations to "Suter" refer to Suter v. Artist M., 112 S.Ct. 1360 (1992). References to the "Suter fix" legislation refer to a provision passed by Congress in 1994, in response to the Suter decision, stating that:

In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S.Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforcement; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that § 471(a)(15) of the Act is not enforceable in a private right of action. Public Law 103-382, §1123, 108 Stat. 3518, 4057 (Oct. 20, 1994) 42 U.S.C. §1320a-2; 1320a-10.

The criteria for including child welfare reform cases in the Docket are that they involve factual allegations and legal claims addressing recurrent, systemic problems in a state or local child welfare or foster care system, and that they seek relief affecting children and families beyond the named plaintiffs. The criteria for including damages cases are that they have been used as a tool for improving the quality of child welfare services and fairly compensated their child victims. Since these cases involve government defendants who frequently change, the names of some cases have changed since the last writing of the docket. We have tried to cross reference the new titles throughout.

We made every effort to include all relevant cases in the Docket, and to provide accurate and up-to-date information on each case. However, errors and omissions are nearly inevitable. Please call Michelle Cheng at (510) 835-8098 with corrections or additions for the Docket.

## **Key Documents**

For each case, we have provided a list of titles and dates of "key documents." These are not complete lists of all the papers filed in the case. (For example, briefs by defendants, reply briefs, attachments and exhibits, and papers relating to discovery or attorneys' fees petitions generally are not listed.) The lists include only the papers that, in our estimation and that of plaintiffs' counsel, would most likely be useful to other advocates.

If a Clearinghouse number is listed for the case, copies of documents can be obtained by contacting the National Center on Poverty Law (formerly known as the National Clearinghouse for Legal Services), 205 W. Monroe Street, 2<sup>nd</sup> Floor, Chicago, IL 60606-5013, (312) 263-3830. The Center provides free copies to subscribers of its library. The library subscription rate is \$60 a year. The Center posts recent materials received in electronic form on its website [www.povertylaw.org](http://www.povertylaw.org). In cases without a Clearinghouse number, copies of documents can be requested from plaintiffs' counsel.

Due to the expanded scope of the Docket, our limited resources, and the availability of the National Center of Poverty Law services, the National Center for Youth Law is not able to send out copies of all documents listed in the Docket.

## **Acknowledgments**

We would like to express our appreciation to the David and Lucile Packard Foundation for helping to make possible the publication of this Docket, and to the law firm of Saperstein, Goldstein, Demchak & Baller for assistance with production of the 2000 edition.

We also would like to thank Martha Matthews, Caroline Jacobs, Christina Valadez, and Ben Winig for their help in updating the Docket and Ethel L. Oden-Brown for her assistance with production. Finally, we would like to express our deepest gratitude to the attorneys whose cases are included in the Docket, who took time from their busy schedules to respond to our requests for information.

Michelle Cheng  
National Center for Youth Law  
March 2000

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**ANA R. v. NEW YORK CITY DEPT. OF SOCIAL SERVICES**

(also known as ANA R. v. SABOL)

FILE NO.,  
COURT AND  
DATE FILED: 90 CIV - 3863 (S.D.N.Y. filed June 7, 1990)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: Plaintiffs claimed that the Department of Social Services and various public and private hospitals in New York City violated their due process rights and 1st, 9th and 14th Amendment privacy rights by removing children from their parents' custody solely on the basis of a toxicology test at birth, without an investigation into the fitness of the parent, and without providing preventive services to the parent.

HISTORY AND  
STATUS: The agency altered its policy so that positive toxicological tests are grounds for making a report, but removal can occur only after an investigation into the family's ability to care for the child.

The court ordered the city to provide plaintiffs with materials for monitoring compliance with the new policy and training materials for enacting the policy.

Settlement negotiations were completed in February 1996. The plaintiffs received damages and some attorney's fees.

**KEY**

**DOCUMENTS:** Complaint (June 7, 1990)

**ANGELA R. v. HUCKABEE**

(also known as ANGELA R. v. CLINTON)

FILE NO.,  
COURT AND  
DATE FILED: LR-C-91-415 (E.D. Ark., filed July 3, 1991)

CITATIONS: 999 F.2d 320 (8th Cir. 1993)

CLEARINGHOUSE  
REVIEW NO.: 48,193

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ISSUES: The complaint addressed nearly all aspects of the state's child welfare services and foster care system, including: abuse and neglect investigations and child protective services; placement prevention and family reunification services; out-of-home placement; health care for foster children; caseloads and staff training; case planning, case review, and quality assurance.

HISTORY AND  
STATUS: The complaint was filed in July 1991, and the class was certified by stipulation in October 1991. From October 1991 through January 1992, the parties engaged in settlement negotiations, resulting in a lengthy and comprehensive consent decree.

The consent decree addressed: investigation of abuse and neglect reports (including reports of abuse and neglect in out of home placements); protective services; out of home placement (resource development, foster parent training, board rates, standards of care, supervision of placement, preparation for independent living); health care for foster children (screening, treatment, record keeping); staffing (qualifications, caseloads, training); family preservation and reunification services (basic services, parental and sibling visitation, intensive family preservation, cash assistance); case planning, case review, and quality assurance.

In February 1992 the parties submitted the consent decree to the district court, and notice was sent to class members. Also, a special session of the Arkansas legislature approved the settlement and passed funding legislation.

The district court entered final approval of the consent decree in April 1992, simultaneously denying the defendants' motion to narrow the plaintiff class in light of the Supreme Court's decision in Suter v. Artist M. Implementation of the consent decree began in summer 1992, monitored by a compliance oversight committee as provided for in the consent decree.

In July 1992, however, defendants filed an appeal in the Eighth Circuit, challenging the district court's denial of their motion to narrow the plaintiff class. The state filed its appeal brief on September 14, 1992; plaintiffs filed their response on October 16, 1992. The court heard oral argument on January 14, 1993.

On July 13, 1993, the Eighth Circuit issued an opinion rejecting the appellants' jurisdictional challenge, but vacating the consent decree and remanding the case to the district court due to a perceived ambiguity in the enforcement provisions of the decree. Plaintiffs sought to negotiate a reinstatement of the settlement, but defendants refused to enter into any enforceable agreement. Plaintiffs then sought relief from the district court, through a motion requesting that the court construe the consent decree to resolve the ambiguity found by the Eighth Circuit.

On March 30, 1994, the district court denied this motion and set the case for trial on October 17, 1994. Plaintiffs began trial preparation, and continued to work with the Monitoring Committee to obtain information about the status of child welfare reform in Arkansas, and to explore any remaining possibility of settlement.

Less than three weeks before trial, defendants again agreed to engage in settlement negotiations. A revised settlement was developed, including substantive provisions very similar to the original 1992 settlement. A new implementation mechanism was devised, however. Instead of explicit implementation steps and deadlines in the agreement itself, the agreement included only the ultimate standards to be achieved by the end of the five-year term of the agreement.

The state agency itself was given the duty of developing a yearly implementation

plan, with the advice of a five-member committee chosen jointly by the parties. The committee also was given the authority to establish outcome measures, to determine whether each year's plan had been accomplished and had resulted in sufficient progress toward the standards set by the agreement. These outcome measures are used by the Center for the Study of Social Policy (CSSP), an independent out-of-state organization, to conduct a yearly evaluation of the agency.

On October 14, 1994, the district court approved the settlement and dismissed the case, retaining jurisdiction solely for purposes of enforcing the settlement.

In January 1997, CSSP submitted its second annual report assessing the progress toward meeting the requirements of the decree. Using performance indicators developed by the Standards Committee, the assessment was based upon a case record review and site visits to six county offices. The CSSP study found that the agency had failed to meet the goals set by the Committee in most areas.

Meanwhile, state legislators, disappointed in the lack of progress, enacted a bill calling for the transfer of certain child protective services responsibilities to the state police. The transfer of operation of the child abuse hotline and authority for conducting investigations of severe child abuse to the Family Protection Unit of the Arkansas State Police (FPU) was implemented in late 1998. CSSP will be conducting a case record review which will include child maltreatment assessments conducted by FPU in their audit in 2000.

In spring and summer 1999, the Standards Committee met with directors of the state agency to discuss the current plans for bringing the agency into compliance with the settlement agreement. Given the agency's continued noncompliance with the settlement agreement, attorneys for plaintiffs informed the agency that unless an agreement for an extension of the terms of the settlement agreement was reached, they would be filing a motion to enforce with the federal district court. On August 30, 1999, plaintiffs and defendants filed a joint motion asking the court to amend the settlement agreement, extending court jurisdiction and the terms of the agreement until October 13, 2001.

CSSP is in the process of completing its annual audit of Arkansas' child welfare system. The year 2000 audit will include a qualitative review, which will include site visits and case specific interviews with all parties involved in a limited number of cases in four counties. CSSP will be using the results of the audit to assist the agency in developing county and statewide plans to achieve compliance with the settlement agreement. Plaintiffs will continue to work with the agency to monitor progress toward compliance.

**KEY**

**DOCUMENTS:** Complaint (July 8, 1991)

Plaintiffs' Motion for Class Certification (July 29, 1991)

Arkansas Child Welfare Reform Document (the consent decree) (Feb. 27, 1992)

Order Approving Consent Decree (May 5, 1992)

Brief for Appellees (Oct. 16, 1992)

Eighth Circuit Opinion (July 13, 1993)

Order Denying Plaintiffs' Motion to Construe Consent Decree (Mar. 30, 1994)

Order Approving Settlement (Oct. 14, 1994)

Joint Motion to Modify Consent Decree (Aug. 30, 1999)

**ARISTOTLE P. v. MCDONALD**

(also known as ARISTOTLE v. JOHNSON)

FILE NO.,  
COURT AND  
DATE FILED: 88 C 7919 (N.D. Ill. filed Dec. 5, 1988)

CITATIONS: 721 F.Supp. 1002 (N.D. Ill. 1989)

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This class action was brought on behalf of children who are or will be in the temporary custody or guardianship of Illinois' Department of Children and Family Services (DCFS), and who have not been, or will not be, placed with their siblings, or will not be given reasonable visitation with their siblings. The plaintiffs alleged that DCFS regularly places siblings into separate foster homes and residential facilities, and refuses to arrange or permit visits between such siblings.

Plaintiffs alleged that DCFS' actions deprive them of rights secured by the 1st and 14th Amendments and the AACWA.

HISTORY AND  
STATUS: In September 1989, the district court ruled on defendants' motion to dismiss, denying it in part and granting it in part. The court found that plaintiffs stated a § 1983 claim for violation of their 1st Amendment and substantive due process rights. However, the district court dismissed plaintiffs' claims under the AACWA, holding that plaintiffs did not have enforceable rights to be "placed in the least

restrictive most family-like setting," to have DCFS make "reasonable efforts to reunify families," and to "meaningful visitation," because these AACWA provisions were too amorphous to be privately enforceable.

Defendants sought to take an interlocutory appeal from this order, but the Seventh Circuit denied their request. Plaintiffs then moved for a preliminary injunction, but further proceedings were stayed due to settlement negotiations.

In March 1994, a consent decree was entered, providing for placement of siblings together when possible; visitation and other contacts among siblings placed apart; training of caseworkers; and monitoring and data collection over a three-year period.

The was scheduled to expire in March 1997, but DCFS remained out of compliance. After negotiations and a threatened motion to show cause, the parties agreed to a two-year extension of the consent decree. The parties retained experts to assist in defining and measuring compliance over the next two years.

The has been extended twice since March 1997, and now expires in April 2002. The decree has brought progress in two particular areas, visiting privileges and the placement of siblings together in the first instance. Progress has been minimal on the latter, and thus post decree work is focused on this issue.

#### KEY

#### DOCUMENTS:

Complaint (Sept. 15, 1988)

Plaintiffs' Motion to Maintain Class Action (Sept. 15, 1988)

Memorandum in Support of Plaintiffs' Motion for Class Action (Sept. 15, 1988)

Plaintiffs' Motion for Preliminary Injunction (Sept. 15, 1988)

Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction (Sept. 15, 1988)

Memorandum Opinion and Order (re: defendants' motion to dismiss and settlement of case), (Sept. 6, 1989)

Order (re: class certification), (Oct. 3, 1989)

Consent Decree (Mar. 11, 1994)

Agreed Order Modifying and Extending Consent Decree (Feb. 5, 1997)

**ARTIST M. v. SUTER**

(also known as ARTIST M. v. JOHNSON)

FILE NO.,  
COURT AND  
DATE FILED: 88 C 10503 (N.D. Ill. filed Dec. 14, 1988)

CITATIONS: 726 F.Supp. 690 (N.D. Ill. 1989), aff'd 917 F.2d 980 (7th Cir. 1990), reversed 112 S.Ct. 1360 (1992)

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: Plaintiffs brought this class action on behalf of children who are or will be placed in the custody or under the supervision of the Illinois Department of Children and Family Services (DCFS) in the course of an abuse, neglect, or dependency proceeding in the juvenile court of Cook County, Illinois. This civil rights class action for declaratory and injunctive relief was brought under the Due Process Clause and the AACWA.

The plaintiffs attacked the defendants' policy and practice of failing to assign caseworkers in a timely manner. Plaintiffs alleged that defendants failed to assign a caseworker until 4-6 weeks after the Juvenile Court proceeding commenced. As a result, many children were without a caseworker at critical times.

**HISTORY AND  
STATUS:**

A preliminary injunction hearing was conducted in January 1989. On August 15, 1989, the court declined to dismiss the case. Plaintiffs conducted further discovery, and in March 1990, the court granted a preliminary injunction. The Seventh Circuit upheld the preliminary injunction.

The Supreme Court reversed in 1992, finding that the AACWA created no private right of action to sue state agencies for failing to make "reasonable efforts" to avoid the need for foster care placement, or to reunify families after the child has been placed.

**KEY  
DOCUMENTS:**

Complaint (Dec. 14, 1988)

Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction (Dec. 16, 1988)

Plaintiffs' Proposed Findings of Fact and Conclusions of Law (Feb. 3, 1989)

Memorandum Opinion and Order (July 24, 1989) (directing both plaintiffs and defendants to file supplemental authorities)

Plaintiffs' Supplemental Submission in Response to Memorandum Opinion and Order (Aug. 4, 1989)

Plaintiffs' Response to Defendants' Motion to Dismiss (Sept. 8, 1989)

Memorandum Opinion and Order (re: Motion to Dismiss, Nov. 29, 1989)

Preliminary Injunction (Mar. 7, 1990)

Order (re: compliance) (Apr. 6, 1990)

Brief of Joann Michell, et al. (Amici) (June 11, 1990)

Brief of Amici Curiae (ACLU, et al) (June 11, 1990)

Petition for Certiorari to U.S. Supreme Court (Mar. 20, 1991)

Brief for Petitioners (Supreme Court) (July 18, 1991)

Brief for Respondents (Supreme Court) (Sept. 11, 1991)

Reply Brief for Petitioners (Supreme Court) (Oct. 15, 1991)

**Amicus Briefs:**

[partial listing]

Brief for the United States as Amicus Supporting Petitioners (July 1991)

Brief for the American Bar Association as Amicus Supporting Respondents (Sept. 1991)

Brief for the ACLU et al. as Amici Supporting Respondents (Sept. 1991)

Brief for the Child Welfare League of America et al. as Amici Supporting Respondents (Sept. 1991)

**B.H. v. MCDONALD**

(also known as B.H. v. SUTER, B.H. v. JOHNSON, and B.H. v. RYDER)

FILE NO.,  
COURT AND  
DATE FILED: 88 C 5599 (N.D. Ill. filed June 9, 1988)

CITATIONS: 715 F. Supp. 1387 (N.D. Ill. 1989)

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This civil rights class action suit was brought on behalf of all children who are or will be in the custody of the Illinois Department of Children and Family Services (DCFS). The complaint charged DCFS with failure to provide services to the children in its care, and with violations of the Constitution and the AACWA.

HISTORY AND  
STATUS:

On May 30, 1989, the court granted in part and denied in part a motion to dismiss concerning a number of constitutional and statutory claims. The court held that the AACWA does not create any privately enforceable right to preventive services. After several months of fruitless negotiations, plaintiffs filed an amended complaint in October 1989. Defendants' motion to strike was denied, and defendants filed an amended answer in November 1989.

Discovery was suspended and settlement negotiations began in November 1990. A consent decree was approved and entered by the court on December 20, 1991, requiring massive reform of Illinois' child welfare agency to be phased in over the next two and one half years. A monitor was appointed to oversee the settlement.

In August 1992, defendants submitted the implementation plans required under the consent decree, outlining its plans for complying with the decree. In response to plaintiffs' and the monitor's objections, defendants submitted several revisions and additions to the plan over the course of the next 14 months, including provisions for seeking supplemental appropriations of funds.

In winter 1993 and winter 1994, the monitor issued year-end reports on defendants' progress in complying with the consent decree; each party then responded to the monitor's reports.

In spring 1993 and spring 1994, defendants issued their annual plan, outlining their progress over the previous year in complying with the consent decree and describing their plans for the next year. Plaintiffs and the monitor then filed objections and comments to the annual plan, and the parties and the monitor held negotiations about how defendants would proceed in light of their non-compliance. Meanwhile, the Illinois legislature, largely in response to the reforms required of the agency by the consent decree, approved large increases each year in the agency's budget.

As of June 1994, the date by which defendants were to have achieved full compliance, defendants were still out of compliance with a majority of the key reforms required by the decree. In response to demands by plaintiffs, and partly due to the appointment of a new director of the agency, defendants acknowledged their serious managerial and structural barriers to achieving compliance, and retained national child welfare and public-sector reform experts to work with them to remove these barriers.

After lengthy negotiations between the parties, supervised by national child welfare and public sector reform consultants, the parties agreed on a series of new strategies to achieve compliance with the decree. First, the parties agreed on a series of outcomes which were to become the focus of efforts at compliance. Second, the parties agreed that the state would replace some of the functions of the court-appointed monitor with a Research Center at the University of Illinois to provide regular reports on the defendants' progress in improving outcomes for plaintiff class, and to make recommendations regarding appropriate actions to ensure further progress. As a result, the court concluded that an appointed monitor was no longer necessary. Third, defendants articulated a series of strategies designed to address many of the most serious issues of non-compliance. These strategies included restructuring the state's approach to placements with relatives; retaining the Child Welfare Institute in Atlanta to retrain all caseworkers, investigators, and

supervisors over a period of two years, and to assist in enhancing in-house training programs; reshaping contracts with private agencies to require measurable progress toward permanency in every caseload, and using these “performancing contracting” tools to restructure the evaluation of state workers and supervisors as well; contracting with the Child Care Association of Illinois to develop specialized programs and services so that hundreds of children could return home from restrictive out-of-home placements; requiring independent reviews of children in institutional placements, and when those reviews revealed deficiencies in programs, removing children from those placements; and restructuring and partly decentralizing some programs in Cook County, the state’s largest county.

The parties initially agreed to broad modifications of the consent decree to redefine compliance in terms of measurable progress in achieving agreed outcomes for children. When the court rejected these modifications as unnecessary in light of the decree’s existing provisions focusing on results for children and the court’s continued willingness to modify particular provisions whenever they proved counterproductive or inefficient, the parties proposed and the court authorized a more modest set of modifications permitting them to proceed with the new reform strategies and to create the Research Center to assist in the evaluation and development of the reform strategy.

Recent reports reveal that the total number of children under DCFS care has dropped from more than 50,000 in 1997 to fewer than 40,000 in 1999. More children were adopted out of the system in fiscal year 1998 than were adopted in fiscal years 1991 through 1994 combined, and the number of children either adopted or placed in guardianships with family members in 1999 alone was nearly 8,500.

Plaintiffs see the next steps in implementation of the consent decree to be improving the educational opportunities for children in DCFS care, providing adequate health care services and implementing programs that address the special emotional and psychological needs of children.

**KEY**

**DOCUMENTS:**

Complaint (June 9, 1988)

Memorandum Opinion (May 30, 1989) (re: motion to dismiss)

Second Amended Complaint (Oct. 17, 1989)

Amended Answer (Nov. 20, 1989)

Consent Decree (approved and entered Dec. 20, 1991)

Annual Reports by Monitor, and responses by plaintiffs and defendant (1993 and

1994)

Annual Plans by Defendant, and responses by plaintiffs and monitor (1993 and 1994)

Motions to Modify Consent Decree and Court's ruling (1996)

**B.M. v. RICHARDSON**

(also known as B.M. v. MAGNANT)

FILE NO.,  
COURT AND  
DATE FILED: IP 89 1054C (S.D. Ind., filed Oct. 1989)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 45,225

ATTORNEYS FOR  
PLAINTIFFS: Kenneth J. Falk  
Indiana Civil Liberties Union  
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(317) 635-4059

ATTORNEYS FOR  
DEFENDANTS: Nancy Gettinger  
Deputy Attorney General  
219 State House  
Indianapolis, IN 46204-2794  
(317) 297-2580

ISSUES: This class action was filed in October 1989, seeking injunctive and declaratory relief under the AACWA and the Due Process Clause on behalf of wards of the Marion County (Indiana) Department of Public Welfare (DPW) and their parents.

Plaintiffs alleged that current child welfare workers were unable to provide the minimal services necessary to prevent unnecessary separation of children from families, to ensure the safety of children in foster homes and to meet with parents and children to formulate a service plan.

HISTORY AND  
STATUS: A first amended complaint was filed in January 1990. Defendants moved to dismiss on the grounds that (1) plaintiffs are prohibited from seeking an injunction against state officials; (2) the AACWA does not create enforceable rights under 42 U.S.C. § 1983; and (3) the complaint does not state a violation of the Due Process Clause. The motion was denied on all three grounds.

The case was set for trial in July 1992, but did not go to trial as parties filed a proposed settlement. Notice was given to the plaintiff class, and the settlement was approved by the court on November 9, 1992.

In January of 1999 plaintiffs filed for contempt, because they were not satisfied with the defendants' compliance under the agreement. Since then, at a joint status conference the defendants produced new numbers and data which led the court to vacate the contempt order. The matter was set for further review in December 1999 at which time the plaintiffs again evaluated the defendants' efforts toward compliance.

**KEY**

**DOCUMENTS:**

First Amended Complaint (Oct. 1989)

Memorandum in Opposition to Motion to Dismiss (Jan. 18, 1990)

Memorandum and Order (denying Motion to Dismiss) (Apr. 23, 1990)

Stipulation to Enter Consent Decree Following Notice to the Class (July 31, 1992)

Motion for Contempt (Jan. 27, 1999)

**BABY ANGEL v. KOCH**

FILE NO.,  
COURT AND  
DATE FILED: 89 Civ. 4770 (S.D.N.Y. filed July 13, 1989)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This class action was filed against the City and State of New York to protect the rights of boarder babies with special needs, including children with HIV infection, cerebral palsy, and other significant medical conditions. ("Boarder babies" are infants who have been medically cleared for discharge from a hospital, but who remain there, because they have nowhere else to go.)

HISTORY AND  
STATUS: A stipulation of settlement was entered in July 1991 which provided for substantially increased monitoring of the release of these children to family settings. As of November 1999, the consent decree had expired.

**KEY**

**DOCUMENTS:**

Complaint (July 1989)

Consent Decree (July 1991)

**BABY NEAL v. RIDGE**

(also known as BABY NEAL v. CASEY)

FILE NO.,

COURT AND

DATE FILED: No. 90-2343 (E.D. Pa. Apr., 1990); No. 94-1381 (3rd Cir., Dec. 15, 1994)

CITATIONS: No. 94-1381 (3rd Cir., Dec. 15, 1994)

CLEARINGHOUSE

REVIEW NO.:

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**ISSUES:** In April 1990, this suit was filed in federal district court against the Commonwealth of Pennsylvania and the Presiding Judge of Philadelphia Court of Common Pleas on behalf of children in Philadelphia's foster care system, charging that defendants are violating the children's constitutional and statutory rights by failing to provide them with basic mandated services.

**HISTORY AND STATUS:** Initially, Philadelphia's Department of Human Services (DHS) officials were not named in the lawsuit because they requested settlement negotiations, but these broke off.

The court rejected the state's motion to dismiss and discovery was begun. DHS refused plaintiffs' request to undertake a case-reading to compile system-wide aggregate data to prove that the allegations in the complaint were widespread, and the court denied plaintiffs' motion to compel.

Plaintiffs filed a class certification motion in April 1990, and in June 1991, defendants filed their opposition. In addition to opposing the motion, they asked that the next friends, all recognized child welfare experts familiar with DHS's operations and failings, be disqualified on the ground that they were not intimately involved in the lives of the children they represented. The court denied plaintiffs' motion and granted defendants' motion to disqualify.

Plaintiffs filed a motion for reconsideration, or alternatively, asked the court to certify subclasses and to substitute as next friends lawyers and private agency social workers who represented the named plaintiffs in family court proceedings. The court granted the substitution, denied the motion to reconsider, declined to certify subclasses until plaintiffs provided more factual support, and told the parties to prepare for trial.

Because the claims of some of the named plaintiffs were becoming moot, plaintiffs filed a motion to intervene additional named plaintiffs, which was granted.

Defendants moved to stay discovery and for summary judgment. The court allowed limited discovery and in six weeks of intensive discovery confirmed that DHS had badly mismanaged the cases of all the named plaintiffs. In late July 1992, plaintiffs responded to the summary judgment motion. In August 1992, plaintiffs renewed the motion for certification of subclasses.

On April 13, 1993, the district court granted in part and denied in part defendants'

motion for summary judgment. In so ruling, it narrowed the scope of plaintiffs' claims.

On October 13, 1993, the court denied plaintiffs' motion for certification of subclasses. Plaintiffs renewed their motion. On December 7, 1993, the court again denied this motion and ordered plaintiffs to prepare for trial. Because the individual claims of most, if not all, of the named plaintiff children had become moot due to the passage of time, plaintiffs and defendants entered into a Stipulation of Entry of Final Judgment on February 28, 1994.

Plaintiffs appealed the denial of their class certification motions and the partial grant of summary judgment. On December 15, 1994, the Third Circuit reversed the district court's orders denying class certification, and remanded the case.

Plaintiffs conducted a case record review of a random sample of case records which documented the problems so clearly that the city and state finally agreed to discuss a negotiated settlement.

Plaintiffs entered into three settlement agreements, one with each of the defendants. The settlement agreements were approved by the court on February 1, 1999. The settlement agreement with the city requires the city to produce certain reports on a quarterly basis, which includes caseload reports, case planning reports, critical and unusual incident reports. In addition, the settlement agreement authorizes plaintiffs to conduct a semi-annual review of a limited number of case records that, by agreement of the parties, are to represent the city's practices with respect to the entire class of children. The family court settlement similarly requires the family court to produce periodic reports, including reports on the progress of the model court. Plaintiffs have recently completed their first case record review pursuant to the settlement agreement with the city and are in the process of compiling the data obtained.

#### KEY

#### DOCUMENTS:

Complaint (Apr. 4, 1990)

First Amended Complaint (July 5, 1990)

Class Action Motion and Memorandum of Law (Apr. 4, 1990)

Memorandum and Order Denying Class Certification (Jan. 6, 1992)

Plaintiffs' Motion for Reconsideration or Certification of Subclasses & Substitution of New Next Friends (Jan. 21, 1992)

Order Granting New Next Friends (Mar. 20, 1992)

Plaintiffs' Motion to Intervene New Named Plaintiffs (Mar. 1992)

Settlement Agreement (February 1, 1999)

Order Granting Motion to Intervene (Apr. 10, 1992)

Plaintiffs' Brief in Opposition to Summary Judgment (July 30, 1992)

Plaintiffs' Motion for Certification of Subclasses (Aug. 24, 1992)

Memorandum Opinion and Order (denying in part and granting in part summary judgment) (Apr. 13, 1993)

Memorandum Opinion and Order (denying subclass certification) (Oct. 13, 1993)

Plaintiffs' Renewed Motion for Certification of Subclasses (Oct. 27, 1993)

Memorandum Opinion and Order (denying subclass certification) (Dec. 7, 1993)

Brief of Appellants (May 9, 1994)

Settlement Agreement (June 30, 1998)

Press Articles

**BABY SPARROW v. WALDMAN**

FILE NO.,  
COURT AND  
DATE FILED: DCA CASE No. 96-4118 AJL  
(U.S. District Court, District of New Jersey, filed Aug. 1996)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
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ISSUES: The case addresses the failure of the State of New Jersey to properly evaluate, care for, and place boarder babies, in violation of the U.S. Constitution. Boarder babies languish in hospitals for days, weeks or even months after they are medically ready for discharge.

HISTORY AND

**STATUS:** Plaintiffs filed their complaint in August of 1996 alleging various constitutional violations. A settlement order was filed in December of 1996. As of October 1999, plaintiffs continue to monitor the state's compliance with the settlement order.

**KEY**

**DOCUMENTS:** Complaint (Aug. 1996)

Stipulation and Final Order of Settlement (Dec. 23, 1996)

Consent Order Extending Settlement (Dec. 21, 1998)

**BATES v. MCDONALD**

(also known as BATES v. SUTER, BATES v. JOHNSON)

FILE NO.,  
COURT AND  
DATE FILED: 84 C 10054 (N.D. Ill. filed Nov. 20, 1984)

CITATIONS: 901 F.2d 1424 (7th Cir. 1990)

CLEARINGHOUSE  
REVIEW NO.: 38,270

ATTORNEYS FOR  
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ATTORNEY FOR  
DEFENDANT: Barbara Greenspan  
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Chicago, IL 60601  
(312) 814-4650

ISSUES: Plaintiffs challenged the practice of the Illinois Department of Children and Family Services (DCFS) of routinely limiting (to one hour per month) visits between foster children and their parents. Plaintiffs also challenged DCFS' practice of having social workers supervise all visits between parents and children, and its failure to provide parents with an opportunity for notice and a hearing to challenge the visitation restrictions. Plaintiffs claimed that these practices prevent parents from maintaining close relationships with their children, hinder their efforts to reunite their families, and violate their rights under the AACWA and the Constitution.

HISTORY AND  
STATUS: A June 5, 1986 settlement provided, *inter alia*, that parents would receive weekly in-home visits, initiated within 10 days of placement, and notice of their visitation and appeal rights. The agency failed completely to implement this settlement, however, and in March 1987, the plaintiffs sued for contempt. After extensive litigation over discovery, the court issued its contempt order in June 1989, and appointed a Special Master in January 1990 to study the obstacles to weekly visitation. Meanwhile, DCFS promulgated new rules which curtailed parents' visitation rights. The district court sanctioned the State for misconduct and orally restrained it from modifying its visitation rules.

In May 1990, the Seventh Circuit held that the district court's "oral injunction" was not binding. However, plaintiffs successfully prevented implementation of the new rules. In 1990 the court appointed Dr. Brandon Greene as Special Master to conduct a full review of DCFS' provision of parent-child visitation in Illinois, in accordance with the 1986 consent decree in this case. The report, filed in March 1991, documents extremely low levels of compliance with the weekly visitation policy, particularly in Cook County. Following this report, DCFS reaffirmed its commitment to providing weekly visitation, and agreed to maintain the consent decree in full force for four additional years after it achieves "substantial compliance."

A detailed implementation plan was submitted to the court on October 29, 1991. A portion of the definition of "substantial compliance" was addressed by a "visitation reform panel," the composition of which was agreed to by the parties' counsel.

The case has been taken off the court's active calendar, DCFS has been purged of contempt, and the plaintiffs are monitoring implementation of the plan. DCFS has agreed to the out-of-court appointment of Jeanine Smith (assisted by Diane Fager) as Bates monitor in addition to Norman monitor.

#### KEY

#### DOCUMENTS:

Complaint (Nov. 20, 1984)

Plaintiffs' Memorandum in Support of Their Motion for a Temporary Restraining Order or Preliminary Injunction (Dec. 6, 1984)

Agreed Order (Dec. 7, 1984) (settlement of plaintiffs' motion for preliminary injunctive relief) and attachments (notice to clients, notice to caseworkers)

Agreed Order (Apr. 3, 1986) (settlement of complaint) and attachments (second notice to caseworkers, second notice to clients)

Notice of Settlement of Class Action and Fairness Hearing (Apr. 23, 1986)

Memorandum Opinion and Order of Contempt (June, 1989)

Order Appointing Special Master (Jan. 29, 1990)

Report of Special Master (Mar. 1991)

**BIXLER v. CHILDREN & YOUTH SERVICES**

FILE NO.,  
COURT AND  
DATE FILED: No. 86-5402 (E.D. Pa., filed Apr. 18, 1986)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 42,317

ATTORNEYS FOR  
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ATTORNEYS FOR  
DEFENDANTS: Ruth O'Brien  
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Office of State's Attorney General  
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(215) 560-2402

ISSUES: This suit challenged Pennsylvania Department of Public Welfare's (DPW) notice and appeal policies for changing family service plans (FSPs). Plaintiffs are parents whose families and children receive child welfare services and/or foster care maintenance payments and associated services.

Plaintiffs claimed that DPW regulations did not require county agencies to provide adequate notice of changes in a family's FSP or of parents' opportunity to appeal, to continue services under the current FSP pending a fair hearing decision, or to petition the committing court prior to any change in the status or placement goal of a child. Plaintiffs argued that these actions violated their rights under the AACWA and the Due Process Clause.

**HISTORY AND  
STATUS:**

The parties entered into a settlement, under which DPW promulgated regulations expanding the procedural safeguards for parents of children in the state's children and youth systems. Pursuant to the regulations, county social service agencies will be required to obtain the juvenile court's approval before changing (1) a child's court-ordered placement location; (2) a court-ordered parent-child visitation plan; (3) the service goal while the child is in placement; or (4) a court-ordered service. The agency is also required to provide written notice to the child and his or her parents of its intent to request court approval to make the change, including copies of court documents detailing the basis of the agency's request. The agency must be able to verify that the notice was sent to the parties at least 15 days before the hearing. Finally, the regulations require the county agencies to provide transportation for parents and children to attend parent-child visits in circumstances in which the visits are deemed a hardship on the parent.

The matter was dismissed as a result of implementation of the regulations.

**KEY  
DOCUMENTS:**

Class Action Complaint (Mar. 2, 1987)

Memo in Support of Determination of Class Action (Dec. 11, 1986)

Consent Decree (Feb. 27, 1987)

Settlement (Apr. 18, 1989)

**BOGUTZ v. STATE OF ARIZONA**

FILE NO.,  
COURT AND  
DATE FILED: No. CV94-04159 (Az.Supr.Ct., Maricopa City., filed Oct. 1993)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 42,317

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Elliot Glicksman  
Stompoly, Stroud, Giddings & Glicksman  
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ATTORNEYS FOR  
DEFENDANTS: Michael F. Carroll  
Burch & Cracchiolo  
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ISSUES: This action was brought on behalf of a class of all present and future foster children, and a subclass including all children who entered state custody after January 1, 1986 and who suffered sexual abuse in foster homes. The case seeks injunctive relief on behalf of the class, and damages for the subclass.

The case was brought to remedy the high instance of neglect, abuse and sexual molestation of children in foster care, and the state's failure to properly investigate abuse/neglect reports; provide preventive and reunification services; provide adequate placements, health care and mental health care for foster children; provide for sibling placement and visitation and parent-child visitation; provide case planning and case review, and achieve permanency for children. The complaint includes constitutional substantive and procedural due process claims, state statutory claims, and state tort claims.

**HISTORY AND  
STATUS:**

The action was originally filed in October 1993, not as a class action, but as a consolidated action on behalf of 36 families. After nine months of litigation, mostly concerning disputes over production of records pertaining to these families, the state filed a motion to dismiss in December 1993.

In June 1994, in response to the defendants' motion to dismiss, the court ordered that an amended complaint be filed, with more detail on the factual basis for plaintiffs' claims. In July 1994, plaintiffs filed an amended complaint, dropping all claims on behalf of parents, and adding the class-action allegations. The state then sought a venue change to Maricopa county. The court held two evidentiary hearings on the venue issue, concluding in January 1995. Venue was returned to Pima County.

In 1996 the court appointed University of Arizona Law School Professor Winton Woods as Special Master, charged with determining whether the state's own record keeping system could be used to identify the children who were abused during the time period in question. The Special Master determined that the state's Central Registry System would only identify eighty percent of the abused children, a figure that would come out to around 210 children. The court concurrently ordered discovery of the case review that was performed by the state on December 13, 1993, which identified another 92 children who may have been abused. Due to some overlap between the two figures, the number of children thought to have been abused remains 210 children, 100 of which have already been named for the court. However, the state has failed to produce the files of these children to the plaintiffs. Plaintiffs are urging that the files be produced so that the guardian ad litem appointed to represent all the children will be able to adequately protect their rights and interests.

Class certification for injunctive relief for Class A was denied in 1997, but the court has indicated that it may reconsider this issue. Certification for Class B on the issues of duty and standard of care is under submission. This case combines the goal of implementing systemic reform with that of compensating children abused while in state custody. Plaintiffs are concerned about the state's inherent conflict of interest in opposing the claims of the foster children it is charged with protecting, and instead representing the state employees.

Trials for two of the children in the representative class are set for Spring of 2000 (see entries for Sergio A. and Rachel W.).

**KEY  
DOCUMENTS:**

Amended Complaint (July 26, 1994)

**BOHLER v. ANDERSON**

FILE NO.,  
COURT AND  
DATE FILED: No. 987660 (San Francisco Superior Court, filed June 24, 1997)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ATTORNEYS FOR  
DEFENDANTS:

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(415) 356-6356

ISSUES: This case sought compliance with a state law requiring defendants to develop and implement a level of care assessment instrument for appropriate placement of foster children.

HISTORY AND  
STATUS:

A petition for writ of mandate was filed June 24, 1997. On November 4, 1997, the court issued an order granting the writ.

**KEY**

**DOCUMENTS:**

Petition for Writ of Mandate (June 24, 1997)

Memorandum of Points and Authorities in Support of Petition for Writ of Mandate (Oct. 1, 1997)

Respondent's Opposition to Petition for Writ of Mandate (Oct. 8, 1997)

Order Granting Writ of Mandate (Nov. 24, 1997)

**BOOREAM v. ORANGE COUNTY**

FILE NO.,  
COURT AND  
DATE FILED: Case No. 798871 (California Superior Court, Orange County, filed Aug. 31, 1998)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO:

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ISSUES: This taxpayer action challenges the detention of abused and neglected infants and young children in Orangewood Children's Home for extended periods of time under illegal and unconstitutional conditions. Allegations against county defendants include depriving children of a secure emotional relationship with a primary care giver; confining children under the age of six in emergency shelters without a court order specifying need for an extensive evaluation, confining children for long periods of time in overcrowded conditions under the supervision of untrained staff who are unable to meet their most basic developmental needs and being unable or unwilling to treat psychological and behavioral disturbances experienced by children

when they have been removed from their families. Allegations against state defendants include failing to develop standards and regulations for the operation of county run shelters as required by state law; permitting county defendants to operate the institution in violation of the law and state and federal constitutions; and failing to monitor the care and services provided to children confined in Orangewood.

**HISTORY AND  
STATUS:**

The complaint in this taxpayer action was filed on August 31, 1998, on behalf of children confined at Orangewood Children's Home.

The parties entered into settlement discussions early in the litigation. Orange County has dramatically decreased the number of young children confined in Orangewood, and the State Department of Social Services has agreed to promulgate regulations governing shelter care facilities.

**KEY  
DOCUMENTS:**

First Amended Complaint and Petition for Writ of Mandate (Sept. 23, 1998)

Memorandum of Points and Authorities in Support of Plaintiff/Petitioners' Opposition to State Defendants' Demurrer (Dec. 15, 1998)

**BROWN v. KEARNEY**

(also known as BROWN v. CHILES, BROWN v. TOWEY, BROWN v. FEAVER)

FILE NO.,

COURT AND

DATE FILED: No. 91-54813 (28) (Fla. Cir. Ct., Dade County, filed Dec. 6, 1991)  
726 So 2d. 322 (FLA 3d DCA 1999)

CITATIONS: 726 So. 2d 322 (Fla. 3<sup>d</sup> DCA 1999)

CLEARINGHOUSE

REVIEW NO.: 52,072

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ATTORNEYS FOR

DEFENDANTS:

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ISSUES:

This action challenged the failure of the Florida Department of Health and Rehabilitative Services (HRS) to prevent the removal of children from their families or to reunite families after separation has occurred, where homelessness is a primary factor in the children's placement or retention in HRS custody.

The plaintiff is the great-aunt and temporary legal guardian of four minor children. After being awarded temporary custody of the children, she was forced to move from her condemned apartment. She alleged that HRS refused to help her locate suitable, affordable replacement housing, while at the same time threatening to remove the children from her custody for failure to provide a home. The plaintiff

claimed that HRS' failure to provide homeless or near-homeless families with housing services designed to avert the removal of children violated the state's Juvenile Justice Act; the AACWA; and equal protection, family integrity and privacy rights guaranteed by the Florida and U.S. Constitutions.

#### HISTORY AND STATUS:

In December 1991, defendants agreed to provide the named plaintiff with housing assistance, through vendor or other agreed third-party payments, by the expenditure of flexible funds.

In May 1992, the court denied defendants' motion for judgment on the pleadings, rejecting arguments that plaintiffs' federal claims are precluded by Suter and that Florida law does not entitle plaintiffs to housing assistance. Defendants then filed a motion for summary judgment, but later withdrew it from the court's calendar.

In February 1993, plaintiffs amended their complaint to include class-action allegations. The court granted class certification at a hearing on October 6, 1993; plaintiffs then commenced discovery. In October 1994, the court granted a motion to compel production of documents, rejecting defendants' arguments concerning privilege, confidentiality, and undue burden.

In December 1995, plaintiffs filed a motion for summary judgment. Defendants filed a cross-motion for summary judgment. Argument was heard in June 1996. On December 27, 1997, the trial court entered an order denying plaintiff's motion for summary judgment and granting defendant's cross motion for summary judgment. The trial court ruled that plaintiffs had no private right of action under the AACWA, nor a private right of action to obtain housing or housing related services under the provisions of the Florida statutes. The court implied that "reasonable efforts" under Florida statutes does not include housing as a specific reunification service because the statute is limited in what the state must provide, i.e. counseling and related support services.

The case was appealed and heard by the Florida Third District Court of Appeal. The DCA affirmed the decision of the trial court. In affirming, the court did not hold that state law prevents the Department from taking children from families solely because of homelessness, since homelessness alone is not abuse and neglect. The court found that prior to any removal in plaintiffs' circumstances, Florida statutes require that an offer of services be made to the family, and that those services be rejected. The services to be offered are within the discretion of the Department. The court further held that, pursuant to the separation of powers doctrine, dependency courts could not order housing related services to reunify the family. The court held that because of its impact on Departmental resources, a dependency court could not order the provision of specific services. Plaintiffs have sought review in the Florida Supreme Court.

The plaintiffs' jurisdictional brief is pending in Florida Supreme Court. State defendants have filed a reply brief in opposition.

**KEY**

**DOCUMENTS:**

Complaint (Dec. 6, 1991)

Joint Stipulation (Dec. 23, 1991)

Order Denying Defendants' Motion for Judgment on the Pleadings (May 14, 1992)

Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment (July 2, 1992)

Amended Complaint (Feb. 17, 1993)

Order Granting Class Certification (Feb. 28, 1994)

Order Compelling Production of Documents (Oct. 5, 1994)

Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment (Dec. 13, 1995)

Order denying Plaintiffs' Motion for Summary Judgment and Granting Defendants' Cross Motion for Summary Judgment (Dec. 27, 1997)

Petitioners' Jurisdictional Brief to the Florida Supreme Court, with decision of DCA. (Apr. 26, 1999)

**BUDREAU v. HENNEPIN COUNTY WELFARE BOARD**

FILE NO.,  
COURT AND  
DATE FILED: No. 94-15706 (Minn.D.Ct., 4th Dist., filed Oct. 6, 1994)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This is a class action suit on behalf of relative caretakers, and children who are in their care due to parental abuse or neglect, including children placed in relatives' care pursuant to a delinquency or Child in Need of Protection or Services (CHIPS) petition.

The suit challenges the Hennepin County child welfare agency's failure to: properly investigate abuse/neglect reports concerning children who began living with relatives after the abuse or neglect occurred, and provide protective services; notify relatives of their right to apply for foster care benefits (instead of receiving the lower Aid to Families with Dependent Children (now TANF) or General Assistance benefit rate); take foster care benefit applications from relatives; and notify relatives of decisions on their applications, explain the amount of benefits and explain the right to appeal.

The complaint raises claims under state statutes and regulations, § 671(a)(12) of the AACWA, and constitutional due process and equal protection claims and seeks declaratory and injunctive relief.

## HISTORY AND STATUS:

Plaintiffs filed a motion for class certification, and defendants filed a motion to dismiss, in November 1994. The court heard oral argument on both motions on January 17, 1995, and class certification was granted. Defendants filed a motion to dismiss which was denied February 25, 1995. During the summer of 1995, the parties mediated a settlement of most of the claims. The stipulation for settlement was signed by the parties in November 1995, and approved by court order dated February 16, 1996. The settlement provided relief in a number of areas.

**Child Protection Procedures.** The Hennepin County Child Protection Agency agreed to assess reports of parental neglect or abandonment of a child living with a relative at the time a report was made. The agency agreed to provide an internal grievance procedure for relatives who disagree with the agency's decision that the child could safely return home.

**Provision of Information.** The county agreed to provide information to relative caretakers about the rights and responsibilities of a relative and child under the following custodial arrangements: no formal legal authority to keep the child; transfer of custody to the relative; placement of the child with the relative as a foster care provider; and adoption by the relative. The agency will provide the information during the child protection assessment before the relative is asked to decide whether they are willing to continue to care for the child and at the time of or prior to serving a pleading seeking a permanent relationship between the relative and the child. The agency also agreed to give written information to caretaker relatives about the circumstances under which a child residing with a relative may be entitled to foster care benefits and the procedure for filing a child protection report. Relatives are to receive this information when they apply for cash assistance for a child in their care.

**Retrospective Relief.** Hennepin County agreed to notify relative care providers who had already received some retroactive foster care payment that they could request a review of the accuracy of the county's payment. The county also agreed to notify certain non-financially responsible relatives who may have cared for children placed with them by the county. Individuals who claim they should have received foster care benefits for the children in their care can apply to the county for payment. The county will review the files to determine whether there was a court order or a voluntary placement agreement. The county must notify claimants of the decision on eligibility, and the right to appeal if they disagree with the county's determination.

**Notice of Fair Hearing on Foster Care Issues.** The Department of Human Services

agreed to implement notice and hearing procedures in foster care cases statewide. Under these procedures, relatives receive written notice from the county agency of any decision to approve, deny, reduce or terminate foster care payments. The notice includes an explanation of the decision, the procedure for appealing, and the scope of the issues to be decided on appeal. The scope of hearings is limited to the issue of whether the county is legally responsible for a child's placement under court order or a formal voluntary placement agreement, and if so, the correct amount of the foster care payment and shall not include review of the propriety of the county's child protection determination or child placement decision.

Plaintiffs are monitoring implementation of the terms of the settlement, and resolving the individual retroactive claims. One issue unresolved by the stipulation was whether relative foster care providers and the children in their care have a due process right to prior notice and a meaningful hearing when the county decides to terminate a Voluntary Placement Agreement accompanying foster care benefits. Plaintiffs filed a summary judgment motion on this issue. By order dated May 7, 1996, the court denied plaintiffs' motion and dismissed the claim with prejudice.

#### KEY

#### DOCUMENTS:

Amended Complaint (Nov. 10, 1994)

Plaintiffs' Response to Motion to Dismiss (Jan. 5, 1995)

Plaintiffs' Motion for Class Certification (Nov. 23, 1994).

Order conditionally certifying class (Feb. 28, 1995)

Order on Motion to Dismiss (Feb. 28, 1995)

Stipulation for Settlement and Order approving Settlement (Feb. 16, 1996)

Plaintiffs' Memorandum in Support of Motion for Summary Judgment on One Unresolved Issue (Mar. 18, 1996)

Order Denying Plaintiffs' Summary Judgment Motion (May 7, 1996)

**BURGOS v. ILL. DEPT. OF CHILDREN AND FAMILY SERVICES**

FILE NO.,  
COURT AND  
DATE FILED: 75 C 3974 (N.D. Ill. filed Nov. 1975)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 16,949

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ISSUES: This is a class action suit filed under Title VI of the Civil Rights Act on behalf of Spanish speaking parents and children entitled to child welfare services.

HISTORY AND  
STATUS: A detailed consent decree entered in 1977 provides for language appropriate placements, language determination, vendor compliance monitoring, translation of all notices and pamphlets, and access to a wide range of services in Spanish.

In July 1991, Ruben Castillo submitted his report to the court as Special Master in a contempt action for violation of the consent decree. After the parties failed to reach any agreement as to appropriate relief, each briefed objections to the Special Master's report. The court overruled virtually all of the defendant's objections and indicated it would enter nearly all of the Special Master's recommendations as a court order. In March 1992, the court appointed Ruben Castillo as independent

monitor for at least a one year period. The monitor's first annual report was due in March 1993, and it was not a favorable report. In 1993 a new monitor, Lila Suleiman, was appointed. Her report was submitted in December 1997. The report indicated continuing noncompliance by the defendants.

With the assistance of the monitor, now acting as a consultant, the defendants devised a work plan to achieve compliance with the consent decree based on the recommendations in the 1997 report. After extensive negotiations, the parties obtained a stipulated court order appointing the monitor as implementation consultant and ordering implementation of the work plan. Plaintiffs' counsel currently report that the defendants are making slow progress. Plaintiffs are also in the process of investigating extension of the terms of the consent decree on a statewide basis.

KEY

DOCUMENTS:

Complaint (Nov. 1975)

Decision on Pending Motions (July 9, 1976) (re: class certification and summary judgment)

Consent Decree (Jan. 14, 1977)

Motion for Contempt (Jan. 1987)

Report of Special Master (July 1991)

Settlement Order (Dec. 1991)

**CHARLIE & NADINE H. v. WHITMAN**

FILE NO.,  
COURT AND  
DATE FILED: 99-3468 (GEB) (Trenton, NJ, filed Aug. 4, 1999)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: Class Action brought on August 4, 1999 on behalf of children affected by the New Jersey Division of Youth and Family Services. The complaint alleged violations of the children's constitutional rights and their rights under AACWA, the Child Abuse Prevention and Treatment Act, Early Periodic Screening Diagnosis and Treatment, § 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Multiethnic Placement Act (MEPA).

HISTORY AND

**STATUS:** The complaint was filed on August 4, 1999. Plaintiffs filed a motion for class certification and are awaiting a response. The defendants filed a motion to dismiss all counts.

On January 27, 2000, the district court granted defendants' motion to dismiss with respect to many of the counts in plaintiffs' complaint. The court did retain the MEPA claims, as well as the substantive due process claims on behalf of most of the children in foster care. Plaintiffs are preparing to file a motion requesting an interlocutory appeal, or in the alternative, for a declaration from the court that the dismissals are final in order to appeal the decisions at this time. Briefing will be finalized in mid-March, 2000. Plaintiffs' counsel are also currently receiving discovery regarding their named plaintiffs.

**KEY**

**DOCUMENTS:** Complaint (August 4, 1999)  
Motion for Class Certification

**CHILDREN A - F v. CHILES**

FILE NO.,  
COURT AND  
DATE FILED: 90-2416 CIV (S.D. Fla. filed October, 1990)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This civil rights class-action was brought against the Florida Department of Health and Rehabilitation Services for violation of Florida foster care statutes specifying that no child should be kept in foster care for more than 18 months without either reunification with the natural parents or initiation of termination of parental rights proceedings.

The complaint seeks declaratory and injunctive relief, under Florida statutes and the due process provisions of the Florida and U.S. Constitutions.

HISTORY AND  
STATUS: In January 1992, the Governor and Secretary signed a stipulation adopting as official HRS policy a plan, "Building Futures for Florida's Children," which, over the three year phase-in period, would result in the foster care system being operated in accordance with Florida law. All children in Florida's foster care system and all

children at risk of being in foster care are entitled to the benefits of the stipulation.

On January 5, 1995, plaintiffs notified the defendants that they were not in compliance, and that plaintiffs intended to seek injunctive relief, including an injunction barring defendants from taking custody of any more children, or receiving any more federal funds, until compliance is achieved. Defendants then requested a meeting, scheduled for late January 1995.

In 1995, a global settlement was reached and approved by the court which certified the class. The case then closed in mid-1995 in accordance with the settlement stipulation.

As of November 1999, plaintiffs are in the process of reopening the case because of noncompliance with the length of stay requirements in foster care homes. No motions have been filed, yet action is pending.

#### KEY

#### DOCUMENTS:

Complaint (Oct. 1990)

Stipulation (Jan. 1992)

Order Approving Stipulation (Jan. 17, 1992)

**CITY OF PHILADELPHIA v. PENNSYLVANIA**

FILE NO.,  
COURT AND  
DATE FILED: No. 139 (M.D. Pa. 1990 filed Apr. 3, 1990)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: In this suit, brought by a statewide class of children and by counties for additional child welfare funding, plaintiffs contended that the Commonwealth had not requested or appropriated funds sufficient for county child welfare agencies to ensure the availability of child welfare services to children in need of those services.

HISTORY AND  
STATUS: The complaint and motion for preliminary injunction were filed on April 3, 1990. Settlement was approved by the court on May 17, 1990.

Under the terms of the Stipulation of Settlement, beginning with the fiscal year

starting July 1, 1991, the Department of Public Welfare is required to forward a "needs-based" budget for Children and Youth Services to the Governor. This "needs-based" budget then must be supplied to the Legislature. The new budget process has resulted in increased funding for children and youth services. For instance, the Governor's 1993 budget request called for an additional \$78 million.

The settlement has been superseded by legislation. Under this legislation, counties submit annual plans for screening and certification by the state. Once the plans are approved, the state is required to fund a specified share of each county's plan. The requirements of the settlement have been codified in the Pennsylvania statutes at 62 PENN. ST. 704.1

**KEY**

**DOCUMENTS:**

Complaint (Apr. 3, 1990)

Motion for Preliminary Injunction (Apr. 3, 1990)

Stipulation of Settlement (approved May 17, 1990)

**COMMITTEE TO END RACISM IN MICHIGAN'S CHILD CARE SYSTEM v. MANSOUR**

FILE NO.,  
COURT AND  
DATE FILED: 85 CV 7438 DT (E.D. Mich. filed Sept. 23, 1985)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This suit was brought to challenge the Michigan Department of Social Services' (DSS) use of race-conscious criteria in its placement of children into foster homes and adoptive homes. The plaintiffs claimed that DSS's policy constituted racial discrimination and violated the Equal Protection Clause of the 14th Amendment. The suit arose when a black child was removed from the home of white foster parents with whom he had stayed for 14 months. The child was then placed with a black parent, because DSS maintained a strict racial matching policy that allowed children to be removed from placements solely on racial grounds.

HISTORY AND  
STATUS: A consent decree was approved by the United States District Court for the Eastern District of Michigan on March 17, 1986. The parties agreed that a "best interest" standard should control all foster care placements, except for initial "short term" placements (up to 45 days of children entering foster care).

Under the best interest criteria, DSS must evaluate the following factors: the physical and emotional needs of the child; the case plan which includes a goal of permanence for the child; the placement's proximity to the child's family; the

possibility of placement with the child's relatives or siblings; the racial, ethnic and cultural characteristics of the child; the religious preference of the child and the child's family; the least restrictive (most family-like) placement for the child; the continuity and stability of the child's current placement, and his/her psychological attachment to it; and, the availability of placement resources to facilitate a timely placement.

The decree also states that if a current foster home placement is considered successful (pursuant to DSS criteria governing the continuation of foster care placements), a child may not be removed solely because he/she is of a different race than the foster parent.

The agreement also develops guidelines to control the placement of children for adoption. The criteria established by DSS for the adoption of foster children by the child's current foster parents must be applied in a non-discriminatory manner, regardless of whether the foster parents are of the same race as the child. Moreover, DSS must notify all foster parents, when they have cared for a foster child for a year or more and the child is available for adoption, that they will be given first consideration for adoption of that child.

However, after these foster parents are considered, and in all other adoption situations, adoptive parents of the same race as the child may be preferred. In such instances, the following factors must be considered (in addition to the racial, ethnic, and cultural characteristics of the child): the physical and emotional needs of the child; the possibility of placement with the child's siblings or relatives; the importance of maintaining the continuity of current relationships; the child's religious preference; and, the child's wishes (particularly if the child is 14 or older).

Finally, regarding the foster parents who initiated this suit, the court ordered that the child could not be removed from their care except by agreement of the parties, or by order of the district court or the county probate court. The foster parents have now adopted the child. The plaintiffs are continuing to monitor the consent decree, which contained reporting provisions for 3 years. Implementation proceeded fairly well; problems that arose were resolved on an individual case basis.

The consent decree resulted in a rise in the adoption rate and an end to problems with trans-racial adoptions. As of October 1999, there is no further activity on the case.

**KEY**

**DOCUMENTS:**

Complaint (Sept. 23, 1985)

Motion for Preliminary Injunction and Immediate Hearing (Sept. 23, 1985)

Brief in Support of Motion for Preliminary Injunction and Immediate Hearing (Sept. 23, 1985)

Consent Decree (Mar. 17, 1986)

**CONSENTINO v. PERALES**

(consolidated for disposition with Martin A. v. Gross)

FILE NO.,

COURT AND

DATE FILED: 43236/85 (N.Y. Sup. Ct., N.Y. City., filed Nov. 7, 1985)

CITATIONS: 138 Misc. 2d 212 (Sup. Ct. 1987); 153 A.D.2d 812 (1st Dept. 1989) aff'd. 75 N.Y.2d 808; 552 N.Y.S. 2d 110; 551 N.E.2d 603 (N.Y. 1990) (denying defendants' appeal of 90-day shelter)

CLEARINGHOUSE

REVIEW NO.: 40,918

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## ISSUES:

Plaintiffs sought housing assistance to enable homeless families and those at risk of becoming homeless to avoid foster care placement of their children due to the families' lack of adequate shelter. This was one of three cases (the other two are Martin A. v. Gross and Grant v. Cuomo) concerning the scope of New York statutes requiring protective and preventive services.

In 1979, New York enacted its Child Welfare Reform Act (CWRA) (1979 N.Y. Laws ch. 610 & 611), which established as state policy that families should not be separated for reasons of poverty alone. The CWRA mandates local social service districts to provide preventive services to families, while creating fiscal incentives for them to do so. New York also has enacted extensive protective services statutes requiring investigations and services when children are alleged to have been abused or neglected.

All three cases rely heavily on these New York statutes. The lawsuits also include claims based on the AACWA, as well as the New York and United States Constitutions.

## HISTORY AND STATUS:

This case was consolidated with Martin A. v. Gross, because plaintiffs in both suits requested that city and state defendants provide sufficient services to enable families to remain together.

In April 1987, the trial court granted plaintiffs' motion for preliminary injunction, finding that the city's failure to provide preventive services to avert or shorten placement in voluntary foster care violates state and federal law. The court ordered the city to develop a comprehensive plan to satisfy its constitutional and statutory obligations to provide such preventive services. The court also enjoined the state's imposition of a 90-day limitation on the provision of emergency shelter as a preventive service.

At a May 1987 conference, the court specified that the plan required by the injunction had to address systemic problems in the provision of preventive housing services and not simply the problems of the individual plaintiff families.

The city's and state's appeals of this decision were argued on May 23, 1989. In their appeal, defendants claimed that the decision in Grant v. Cuomo, 130 A.D.2d 154 aff'd, 73 N.Y.2d 820, should control, but the appellate court disagreed. On September 28, 1989, the Appellate Division unanimously affirmed the April 27, 1987 orders granting preliminary injunctions. The court distinguished Grant and held that once there is a finding that a child will be placed or continued in foster care unless preventive services are provided, the social services agency is mandated to provide appropriate services to the child and the family.

The Appellate Division ordered defendants to develop and implement individual

case plans for the named plaintiffs, and determined that housing services must be included as preventive services under New York's CWRA. It also affirmed the lower court's ruling striking down the state's 90-day emergency shelter limitation.

The state defendant moved to appeal the Appellate Division's order as to the 90-day limitation issue, but its request was denied in January 1990.

Plaintiffs have continued to monitor and enforce the individual case plans and have also enforced implementation of a rental subsidy program that the state developed.

In 1993, plaintiffs sent a proposed stipulation to defendants, but defendants' counsel did not respond. Based on the new city administration's decision not to pursue settlement negotiations further, plaintiffs began systemic enforcement proceedings in 1994. Plaintiffs' motion for systemic injunctive relief and intervention and the city's and state's cross-motions for summary judgment, were submitted to the court on November 30, 1994.

In addition to other relief, plaintiffs sought an enforcement order directing the city to provide preventive rental subsidies to families with children at risk of foster care placement primarily due to lack of housing, and to provide reunification rental subsidies to shorten foster care placement where lack of housing is the primary barrier to reunification.

In 1996, leaving intact the individual plaintiffs' damages claims, the court granted a partial summary judgment for the government defendants, dismissing constitutional and certain other claims, but allowing the plaintiffs to proceed with claims for enforcing the requirement for preventive services including having rent subsidies.

#### KEY

#### DOCUMENTS:

Complaint-- Class Action (Nov. 7, 1985)

Plaintiffs' Notice of Motion (Nov. 7, 1985) (seeking preliminary injunction)

Memorandum of Law in Support of the Motion of Plaintiffs and Proposed Plaintiff-Intervenors for a Preliminary Injunction, Class Certification, and Permission to Intervene (Nov. 20, 1985)

Decision and Order (Apr. 27, 1987) (consolidating case for disposition with Martin A. v. Gross and granting plaintiffs' motion for preliminary injunction)

Brief on Appeal for Plaintiff-Respondents and Plaintiff-Intervenor-Respondents (Apr. 26, 1989)

Plaintiffs' Motion for Systemic Injunctive Relief (Nov. 30, 1994)

Decision (Aug. 1, 1996) and Order (Oct. 29, 1996) partially granting defendants' cross motions for summary judgment

**DANA W. v. JOHNSON**

FILE NO.,  
COURT AND  
DATE FILED: 90 C 3479 (N.D.Ill.; filed June 18, 1990)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This action was filed on behalf of dependent children in Cook County whose cases were not assigned to any judge, and who were not receiving the 18-month review hearings mandated by federal law. The complaint alleged violations of these children's due process rights.

HISTORY AND  
STATUS: The original complaint named only the Department of Children and Family Services as a defendant. Plaintiffs prepared an amended complaint to add Cook County as a defendant.

At that point, plaintiffs, DCFS officials, and county officials negotiated a consent judgment in which the county agreed to increase the number of judges hearing abuse and neglect cases to 14 within the next year. DCFS agreed to provide funds for three years for the county to hire eight court administrators who would review

cases, resolve issues not needing judicial attention, and refer cases requiring judicial attention to the judges.

In January 1993, a final consent decree was signed and submitted to the court. The decree was approved and entered by the court on March 25, 1993.

As of November 1999, the defendants are still in compliance with the consent decree.

**KEY**

**DOCUMENTS:** Consent Decree (Mar. 25, 1993)

**DAVID C. v. LEAVITT**

FILE NO.,  
COURT AND

DATE FILED: No. 93-C-206W (D.Ut., complaint filed Feb. 25, 1993).  
Case No. 99-4223 (10<sup>th</sup> Circuit)

CITATIONS:

CLEARINGHOUSE

REVIEW NO.: 48,842

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**ISSUES:**

This is a comprehensive child welfare reform class action, on behalf of all foster children and children reported as abused or neglected in the state of Utah.

The complaint addressed nearly all aspects of the state's child welfare services and foster care system, including: abuse & neglect investigations & child protective services; quality and safety of out-of-home placement; health care and mental health care for foster children; caseloads and staff training; case planning, case review; and permanency planning.

**HISTORY AND STATUS:**

Plaintiffs moved for class certification in March 1993; and the court granted this motion in May 1993. Shortly thereafter, defendants agreed to begin settlement negotiations. With the aid of a third-party mediator, plaintiffs negotiated a comprehensive settlement providing for reform in every aspect of Utah's child welfare system.

The final section of the settlement agreement provides for a three-member Monitoring Panel, which is charged with reporting to the court the defendants' progress in fulfilling the terms of the settlement agreement, during the four-year period covered by the settlement provisions. The agreement requires the Panel to make written quarterly compliance reports. The Panel must present its findings to both sides and each has 15 days to redact confidential information. In addition, each party has 20 days to seek court review if it disagrees with a finding of compliance (for plaintiffs) or non-compliance (for defendants). The Panel retains the discretion to define an appropriate level of compliance with each provision of the Agreement based upon a review of the agency's implementation of that provision. The monitoring section also provides for a dispute resolution mechanism, known as the Grievance Council, which included an attorney for the plaintiff class, to address problems that arise concerning individual children. In 1995, the Utah Legislature unilaterally eliminated the Grievance Council. The legislature replaced the Grievance Council with a Consumer Hearing Panel, but did not set aside a seat for one of Plaintiffs' attorneys.

The settlement was signed by Governor Leavitt on May 17, 1994, and tentatively approved by the district court on June 3, 1994; after notice to the class and a fairness hearing, the court granted final approval of the settlement on August 29, 1994.

While settlement negotiations were ongoing, legislative interest in child welfare reform resulted in the passage of two major bills, including a comprehensive overhaul of Utah's statutory standards for dependency court hearings and decision-making, and a separate bill reforming and expanding the Guardian ad Litem system. Plaintiffs worked with Utah child advocates and legislators to ensure coordination between these legislative reforms and the consent decree.

During the 1994 legislative session, the legislature approved a budget increase for the state child welfare agency of almost \$15 million, to cover the reforms mandated both by the new legislation and by the first year's requirements of the settlement. An additional appropriation of \$ 1 million was made for the Guardian ad Litem system reform.

The Panel issued three reports on DCFS' progress in implementation of the settlement agreement. The reports showed that the agency's performance consistently worsened. In the most recent report, issued on July 2, 1996, the Panel found full compliance with only four of the 95 areas covered by the settlement agreement. Believing that defendants made clear their refusal to implement the settlement agreement, plaintiffs filed a motion to enforce the settlement agreement and appoint a receiver on November 11, 1996. In this motion the plaintiffs asked the court to give the Panel additional resources to develop a legitimate Corrective Action Plan that would address the agency's failure to comply with the settlement agreement. Plaintiffs also asked the court to appoint a receiver to implement the new Corrective Action Plan.

On March 17, 1997, the court entered a Memorandum Decision and Order granting in part and denying in part Plaintiffs' Motion to Enforce Settlement Agreement and Appoint Receiver. The court rejected defendants' argument that the remedy plaintiffs must seek for defendants' alleged non-compliance was contempt. It held that neither the settlement agreement nor any provision of law makes contempt a prerequisite to enforcing a settlement agreement. The court adopted the Panel's finding in Report 96-1, which found the defendants in non-compliance with the settlement agreement. However, the court did not appoint a receiver over the agency because it did not find that defendants were unwilling or unable to correct the problems. Although the court declined to appoint a receiver, it found that some level of intervention was warranted and granted plaintiffs' motion to order the Panel to prepare a Comprehensive Plan. The court also ordered defendants to give the Panel the necessary resources to meet its obligation under the settlement agreement.

The court also found that the Utah legislature's elimination of the grievance council (for resolving individual complaints of class members) violated the settlement agreement, and it directed the parties to try and resolve this. The parties entered into a stipulation recreating and funding the grievance council.

The Monitoring Panel hired Paul Vincent, director of the Child Welfare Policy and Practice Group (CWPPG), as a consultant to develop an instrument to monitor defendants' compliance with the settlement agreement and to develop a Comprehensive Corrective Action Plan based on his findings.

In June 1998, plaintiffs filed a motion seeking to extend the four-year term of the settlement agreement, which was due to expire in August 1998, on grounds that the defendants were not even close to compliance with the agreement. Judge Tena

Campbell (newly assigned to the case after the former judge took senior status) denied this motion. The judge ruled that, although the court had the power to extend the term of the settlement, she would decline to do so, because simply extending the term of the agreement would not resolve the recurrent problem of lengthy delays and disputes over compliance measures, monitoring methods and corrective action, that had impeded the effectiveness of the settlement agreement.

In August 1998, plaintiffs filed a follow-up motion asking the court to order implementation of the Comprehensive Plan– the compliance plan ordered by the court in March 1997, which was finally completed and submitted by the Monitoring Panel a few weeks before the expiration of the settlement agreement. The Comprehensive Plan, developed by the defendants, the Monitoring Panel, and expert consultant Paul Vincent, was intended to resolve barriers to compliance with the substantive standards of the agreement, by addressing problems in management, staff training and supervision, practice standards, measurement of outcomes, service quality, etc.

In September 1998, Judge Campbell issued an order indicating that she was inclined to grant the plaintiffs’ motion, but would allow defendants and the consultant eight months to revise the Comprehensive Plan, and to develop new mechanisms for monitoring compliance, correcting problems, and resolving disputes.

In April 1999, defendants submitted a draft version of the Comprehensive Plan, now entitled the DCFS Performance Milestone Plan (Plan). Plaintiffs then submitted comments and proposed amendments to the Plan. Defendants incorporated a number of the plaintiffs’ suggestions and in early May 1999 submitted their final version of the Plan to the court. At the same time, defendants filed an objection to court enforcement of the Plan. On May 18, 1999, plaintiffs filed a reply motion and memorandum asking the court to retain jurisdiction, order implementation of the Plan, and appoint CWPPG as monitor.

On October 15, 1999, Judge Campbell issued an order retaining jurisdiction, ordering implementation of the Plan, and appointing CWPPG as monitor. On November 16, 1999, defendants filed a notice of appeal of the court’s 1998 and 1999 orders. Currently, plaintiffs are awaiting defendants’ appellants brief and preparing for the appeal.

**KEY**

**DOCUMENTS:**

Complaint (Feb. 25, 1994)

Motion for Class Certification (Mar. 15, 1993)

Order Granting Class Certification (May 7, 1993)

Consent Decree (Aug. 29, 1994)

Memorandum in Support of Plaintiffs' Motion to Enforce Settlement Agreement and Appoint Receiver (Aug. 12, 1996)

Defendants' Memorandum in Opposition to Plaintiffs' Motion to Enforce Settlement Agreement and Appoint Receiver (Nov. 22, 1996)

Plaintiffs' Reply Memorandum in Response to Defendants' Opposition to Motion to Enforce the Settlement Agreement and Appoint Receiver (Dec. 29, 1996)

Memorandum Decision and Order Granting in Part and Denying in Part Plaintiffs' Motion to Enforce Settlement Agreement and Appoint Receiver (Mar. 17, 1997)

Stipulation Regarding the Grievance Council (Apr. 11, 1997)

Memorandum in Support of Plaintiffs Motion to Extend the Term of the Settlement Agreement (June 1998)

Memorandum In Support of Plaintiffs' Motion to Enforce Comprehensive Plan (Aug. 1998)

Court Order (Enforcing Implementation of Comprehensive Plan and Appointing Monitor) (Oct. 15, 1999)

**DEL A. v. EDWARDS**

FILE NO.,  
COURT AND  
DATE FILED:

86-0801 Section: G, Mag.4 (E.D. La. filed Feb. 25, 1986)

CITATIONS:

855 F.2d 1148 (5th Cir. 1988); vacated and en banc review granted, 862 F.2d 1107 (5th Cir. 1988); appeal dismissed 867 F.2d 842 (5th Cir. 1989)

CLEARINGHOUSE  
REVIEW NO.:

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**ISSUES:**

Several foster children are the named plaintiffs in this class action suit filed against the Louisiana Department of Health and Human Resources (DHHR). The class comprised the six thousand children in foster care in Louisiana and all children at risk of being placed in foster care.

The suit charged that Louisiana is violating key provisions of the AACWA by failing to make "reasonable efforts" to prevent family breakup. The suit also alleged that most Louisiana children have inadequate case plans, or none at all, that case reviews are carried out in very few cases, and that DHHR often does not implement recommendations resulting from the few reviews that are conducted. The complaint further alleged that the agency fails to maintain a reliable information system identifying the number of children in foster care or tracking actions taken on behalf of these children, as required by the AACWA.

**HISTORY AND  
STATUS:**

In 1988, defendants moved to dismiss on the basis of qualified immunity. The motion was denied by the district court, and the denial was affirmed by the court of appeals.

However, after defendants' motion for rehearing *en banc* was granted, plaintiffs moved to dismiss the damages claims and defendants agreed to dismiss the appeal.

Trial began March 6, 1989. The court heard two days of testimony about three of the named plaintiff children. Defendants admitted that they had violated the law with respect to those children and that entry of an order to that effect would be appropriate. The court adjourned the trial to give the parties the opportunity to discuss settlement.

Settlement discussions were unsuccessful, and the trial resumed in November 1990. The district court, however, refused to permit the case to proceed as a class action when the state said that it would voluntarily agree to apply any court order issued

to all of the children in the state. Based on this stipulation, the court insisted that the trial be limited to the eleven children named as representative of all the children in the state. The court refused to allow evidence that, because those children had been known to the state for years, the improvements in their situations were atypical. In addition, the court refused to admit any of plaintiffs' extensive evidence showing the system-wide problems in the Louisiana child welfare system.

Plaintiffs presented evidence of violations of law relating to the eleven children. The state largely admitted the violations but argued that they were not currently significant.

In 1991 the court ruled for defendants on all grounds. The court reversed its prior ruling and found that children in foster care have few, if any, enforceable rights, and even if they had such rights, plaintiffs had not shown any violations of law relating to the eleven children.

Plaintiffs appealed the decision, but the appeal was later withdrawn.

The Louisiana child welfare system has, however, improved as a result of the case. The state developed an extensive reform plan that provided for a large number of changes in both policies and procedures. The legislature funded that plan by appropriating an additional \$8 million for child welfare. Inadequate administrative staff were replaced by more competent staff.

#### KEY

#### DOCUMENTS:

Complaint (Feb. 24, 1986)

Motion to Certify Class Action (Apr. 14, 1986)

[note: plaintiffs also filed three renewed Motions for Class Certification, on Feb. 22, 1988, Jan. 30, 1989, and July 17, 1990]

Memorandum of Law in Support of Plaintiffs' Motion for Class Certification (Apr. 14, 1986)

First Amended Complaint (Apr. 25, 1986)

Plaintiffs' Memorandum of Law in Opposition to Governor's Motion to Dismiss (July 2, 1986)

Plaintiffs' Memorandum in Support of the Legal Claims Asserted in the Complaint, and in Further Support of Their Motion for Class Action Status (July 2, 1986)

Order Granting Defendant Governor's Motion to Dismiss (July 18, 1986)

Memorandum of Law in Opposition to Defendants' Motion to Dismiss and/or Motion for Summary Judgment (Nov. 17, 1987)

Plaintiffs' Supplemental Memorandum in Opposition to Summary Judgment (Feb. 25, 1988)

Order Denying Defendants' Motion to Dismiss and/or for Summary Judgment (Mar. 2, 1988)

Plaintiffs' Brief on Appeal (Apr. 29, 1988)

Opinion and Order (affirming district court order) (Sept. 28, 1988)

Plaintiffs' Statement of Facts (Oct. 31, 1988)

Memorandum and Order (denying defendants' motion) (Dec. 19, 1988)

Plaintiffs' Pretrial Proposed Findings of Fact (Feb. 14, 1989)

Second Amended Complaint (May 17, 1990)

Plaintiffs' Proposed Findings of Fact (re second trial) (Oct. 2, 1990)

Also of interest:

Casereading instrument and report (1988)

**DUPUY v. MCDONALD**

(also known as TARA S. v. MCDONALD)

FILE NO.,  
COURT AND  
DATE FILED: 97 C 4199 (filed June 11, 1997)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 51,679

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ISSUES: This case concerns the constitutionality of the credible evidence standard for indicated child abuse and neglect reports, the procedures applied in investigation, and an inadequate expungement notice and hearing process. The suit seeks injunctive relief on behalf of child care workers who are being terminated from employment due to false indicated reports, and also seeks relief for children and families who are victims of unconstitutional policies and procedures.

**HISTORY AND  
STATUS:**

This case was filed on June 11, 1997. A class of over 145,000 person has been certified and a four week hearing on a class preliminary injunction motion has been completed. Plaintiffs have proven error rates of seventy-five percent in indicated findings on appeal. The case went to trial in the summer of 1999, and plaintiffs are now waiting to file their post-trial briefs.

**KEY  
DOCUMENTS:**

Complaint (June 11, 1997)

Briefs and Findings of Fact will be available after December 1, 1999.

**E.F. v. SCAFIDI**

FILE NO.,  
COURT AND  
DATE FILED: No. J91-0591(L)(C) (S.D.Miss., filed Oct. 11, 1991)

CITATIONS: 851 F.Supp. 249 (S.D.Miss 1994)

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This case challenged state practices regarding children with mental or physical disabilities who are in foster care or otherwise in state custody. The complaint included constitutional claims, Child Abuse Prevention and Treatment Act and AACWA claims, and claims under the Americans with Disabilities Act, § 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act, and sought declaratory and injunctive relief.

HISTORY AND  
STATUS: In November 1991, the parties stipulated to an order addressing the placement and education needs of the named plaintiff, E.F.

In December 1992, the court denied a motion for class certification, on the grounds that E.F.'s claims were moot and he was no longer an adequate class representative; the court also denied a motion by two other children to intervene as class representatives, due to lack of information about these children's circumstances and claims.

In August 1993, however, the court granted renewed motions to intervene and to

certify the class. The court certified a class consisting of all children eligible for Protection & Advocacy services (i.e. all children with disabilities) who are, or are at risk of being, in foster care or institutional placements, or living at home subject to protective orders.

In spring 1994, defendants sought reconsideration of the order granting class certification. Plaintiffs, in their response, sought to amend the complaint to add new claims under Title IV-B, Subpart 2 (the Family Preservation & Support Services provisions). The court denied both motions on April 21, 1994.

Defendants filed a motion to dismiss, or for summary judgment, in fall 1994. In January 1995, plaintiffs brought the federal "Suter fix" legislation to the court's attention at a status conference. Plaintiffs and defendants, because of this change in federal law and because of proposed state legislative reforms, agreed to a stay of proceedings until mid-1995.

The District Court dismissed the case on March 13, 1996. The petition for rehearing was denied in an unpublished opinion by the 5th Circuit on April 7, 1997. The United States Supreme Court denied *certiorari*.

#### KEY

#### DOCUMENTS:

Complaint (Oct. 11, 1991)

Amended Motion for Certification of Class (June 8, 1992)

Order (denying motion to intervene and motion for class certification) (Dec. 17, 1992)

Second Motion for Certification of Class (Jan. 7, 1993)

Order Granting Class Certification (Aug. 12, 1993)

Amended Complaint (leave to amend granted Aug. 12, 1993)

Order Denying Motion to Reconsider Class Certification, and Denying Motion to Amend Complaint (Apr. 21, 1994)

**EMILY J. v. WEICKER**

FILE NO.,  
COURT AND  
DATE FILED: No. 393CV1944 Judge and RNC (filed October 25, 1993)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ATTORNEYS FOR  
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Margaret Chappelle

ISSUES: This lawsuit was filed to remedy the serious problem of children languishing in overcrowded detention centers without proper services, care, or alternatives to incarceration. Over 3,000 children annually were locked up pretrial in facilities in Bridgeport, New Haven, and Hartford, where sexual and other assaults were prevalent; appropriate medical, mental health and educational services were lacking; recreational opportunities were sporadic; and housing conditions were deplorable.

This lawsuit represents the first effort by Children's Rights' to address the cross-system issues of children in juvenile justice facilities-- many of whom are little more than runaways from child welfare programs-- and abused and neglected children rejected by the child welfare system who wind up in juvenile detention facilities for lack of alternative placements. This chronic fragmentation of services results in many children falling through the cracks between the child welfare and juvenile justice systems.

HISTORY AND  
STATUS: This lawsuit was brought against three state agencies which have responsibility for these children: the Judicial Department, which manages the detention centers; the Department of Children and Families, which oversees the child welfare system, contracts for residential placements and operates the state training school; and the three city education departments which deliver the educational services within

detention.

Early in 1997, successful settlement negotiations were completed and the resulting consent decree was approved by the federal court on February 6, 1997.

Traditional remedies embodied in consensual settlements of conditions-of-confinement cases were included, such as expanded recreation and education opportunities, increased staffing and staff training, and a behavior management program. In addition, the decree also expands medical and mental health care services and staffing through contracts with highly respected community health providers, including the Yale Child Study Center and the Yale Psychiatric Institute, which can maximize the continuity of care once the adolescents are discharged into the community. In order to prevent those victims of child abuse from "falling through the cracks" in the juvenile detention system, the decree mandates that DCF receive a population list from detention centers on a daily basis and work with the youths' attorneys and probation officers to seek placement decisions which constitute alternatives to incarceration. The decree also includes a state commitment to a substantial expansion of alternatives to confinement.

The consent decree is currently being monitored.

**KEY**

**DOCUMENTS:**

Consent Decree (city) (filed Feb. 6, 1997)

Consent Decree (state) (filed Feb. 6, 1997)

**ERIC L. v. BIRD**

FILE NO.,  
COURT AND  
DATE FILED: Civil No. 91-376-M (filed 1991)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This case was brought on behalf of all children in foster care, or at risk of being placed in foster care, and all children who are known or should be known to the state due to reports of abuse or neglect. The class is divided into 3 subclasses: (a) children about whom a report of abuse or neglect has been received; (b) children at risk of foster care placement who need services, and children in foster care who need services and/or permanent homes; and (c) children with disabilities who (i) are placed in residential facilities or are at risk of such placement; (ii) who are in foster care and need services; and (iii) who have been labeled as 'unadoptable.'

The case challenges the state's failure to properly investigate abuse/neglect reports; provide services to keep families together; provide safe and stable placements for

children who cannot live at home; and provide proper care and services, and stable, appropriate placements, to children with disabilities.

The complaint states claims under the AACWA, the Child Abuse Prevention and Treatment Act (CAPTA), the Americans with Disabilities Act (ADA), §504 of the Rehabilitation Act; and constitutional claims, including an equal protection claim on behalf of the subclass of children with disabilities, substantive due process claims regarding adequate treatment while in state custody and family association rights, and a procedural due process claim regarding arbitrary deprivation of protections guaranteed by state law.

#### HISTORY AND STATUS:

The class was certified in December 1993.

In March 1994, the district court ruled on defendants' motion to dismiss, granting it in part and denying it in part. The court concluded that the AACWA and CAPTA claims must be dismissed under Suter, but expressed doubt about the proper interpretation of Suter in light of First Circuit case law. The court also dismissed some of plaintiffs' constitutional claims (regarding stability in foster care, and freedom from bodily restraint).

The court denied the motion to dismiss as to plaintiffs' ADA and §504 claims, and the remaining constitutional claims (regarding safety and humane treatment while in state custody, family integrity, equal protection, and procedural due process rights regarding interests created by state law).

Plaintiffs applied to the First Circuit for leave to take an interlocutory appeal to resolve the Suter issues, but this application was denied in January, 1995. Plaintiffs then sought reconsideration of the district court's dismissal of their statutory claims, in light of the "Suter fix" legislation.

In June 1997, the United States District Court for the District of New Hampshire preliminarily approved a proposed settlement agreement. On July 29, 1997, the court granted final approval of the settlement agreement.

The settlement agreement included provisions for the Division of Children, Youth and Families (DCYF) to adopt and to implement policies and procedures that speed up the adoption process once a decision has been made to terminate parental rights; for DCYF to implement policies for timely assessments of reports of abuse or neglect, and for DCYF to ensure that all children in foster care receive adequate medical and mental health care services. In addition, DCYF will hire another foster care recruitment worker and develop a pre-training curriculum for foster parents. The settlement also calls for additional training for DCYF's child protection staff. The performance of DCYF's obligations will be supervised by a 3 member Oversight Panel. The agreement is effective until September 1, 2002.

As of October 1999 plaintiffs continue to monitor compliance with the settlement agreement.

**KEY**

**DOCUMENTS:**

Amended Complaint (May 1, 1991)

Response to Motion to Dismiss (Feb. 9, 1993)

Order Certifying Class (Dec. 13, 1993)

Order on Motion to Dismiss (Mar. 31, 1994)

Application for Leave to Take Interlocutory Appeal (Nov. 9, 1994)

Order Preliminarily Approving the Proposed Settlement of the Class Action (June 16, 1997)

**IN THE INTEREST OF F.B.**

(also known as IN RE FRANK B.)

FILE NO.,  
COURT AND  
DATE FILED:

83 J 14375 (Ill. Cir. Ct., Cook City. Juv. Div.); 89-1493 (Ill. Ct. App., 1st Jud. Cir.,  
filed June 4, 1989)

CITATIONS: 564 N.E.2d 173 (Ill. App. 1990)

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES:

Plaintiffs are children who have been alleged or proven to be neglected or abused by their parents or caretakers, and who have been removed from the custody of those parents or caretakers. The petition for mandamus and injunctive relief was brought pursuant to Illinois statutes and regulations to redress violations of the Illinois and United States Constitutions caused by defendants' dangerous overcrowding of shelters.

Plaintiffs sought to enjoin the practice of placing children in unsafe and overcrowded facilities at shelters operated by the Division of Children and Family

Services (DCFS).

Plaintiffs requested that no child be placed at any DCFS shelter unless: (1) the placement complies with the licensing capacity of the shelter, and unless the shelter, with its current population, meets applicable fire and building code standards; (2) the child has a minimum degree of privacy at the shelter, and adequate sleeping space, education, visitation, recreational facilities, supervision, and counseling; (3) the shelter staff is notified of the child's history to the extent it is known to DCFS, including whether the child has been the victim or perpetrator of sexual abuse, hospitalized for mental illness, has special medical needs, a history of delinquency or violent behavior, has a gang affiliation, or a history of drug abuse; (4) the shelter staff is able to segregate or otherwise protect the child based on the child's history; and (5) the placement is safe and suitable.

**HISTORY AND  
STATUS:**

The Circuit Court of Cook County issued a preliminary injunction requiring defendants to comply with all of plaintiffs' requests.

Defendants appealed, and in September 1989, the appellate court vacated the preliminary injunction and remanded the case. After remand, a class of children requested a report from the guardian because the shelters were again unsafe and overcrowded. The court ordered the report be made, but state officials refused to cooperate, were held in contempt, and appealed. The appellate court held that the court-ordered report was an abuse of discretion.

The same class of children sought injunctive relief focusing on abusive treatment by shelter workers, but the trial court denied plaintiffs' motion for partial summary judgment.

The state agency ceased operating all shelters as of March 1992. The shelters are now privately run under contract with the state agency.

**KEY  
DOCUMENTS:**

Plaintiffs' Supplemental Petition and Motion to Amend (June 1, 1989)

Order (June 5, 1989) (granting preliminary injunction)

Brief on Appeal and Argument of Petitioners/Appellees (July 6, 1989)

Order (Sept. 1, 1989) (vacating order of June 5, 1989 and remanding case to the circuit court)

**FREEMAN, et. al. v. SCOPPETTA**

FILE NO.,  
COURT AND  
DATE FILED: 98 Civ. 5636 (SDNY 1998)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 52,183

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**ISSUES:** This case commenced on behalf of a proposed class of foster parents who have requested, or will request, a fair hearing involving foster care benefits provided by defendants New York City Administration for Children's Services or foster care agencies under contract with city defendants.

**HISTORY AND STATUS:** Plaintiff class sought declaratory and injunctive relief against the alleged practice and policy of city defendants of failing to comply in a timely manner with favorable Fair Hearing decisions concerning foster care benefits. Plaintiffs sought declaratory and injunctive relief against the alleged practice and policy of State defendants of failing to schedule hearings and issue decisions in a timely fashion, and for failing to ensure that city defendants timely comply with favorable Fair Hearing decisions.

In August 1999, the parties reached a settlement in which the state and city will provide substantial compliance and monitoring, and will take other remedial steps. The court approved the settlement agreement on November 5, 1999.

**KEY DOCUMENTS:** Settlement Agreement (November 5, 1999)

**G.L. v. STANGLER**

(also known as G.L. v. ZUMWALT)

FILE NO.,

COURT AND

DATE FILED: 77-242-CV-W-3-JWO (W.D. Mo., filed Mar. 28, 1977)

CITATIONS: 564 F.Supp. 1030 (W.D. Mo. 1983) (Consent Decree), 731 F.Supp. 365 (W.D. Mo. 1990)

CLEARINGHOUSE

REVIEW NO.: 20,937

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ISSUES:

In this class action, plaintiffs sought to establish federal constitutional and statutory rights of foster children to be protected from harm and to receive appropriate treatment while in the custody of the state. The lawsuit was filed against officials of the Missouri Division of Family Services (DFS) on behalf of all children in Jackson County placed in foster homes by DFS pursuant to juvenile court order, and alleged that DFS policies and practices resulted in harm to children.

The complaint alleged that class members were exposed to contagious diseases, deprived of medical and psychiatric care, subjected to physical and emotional abuse, and transferred between foster homes inappropriately and without adequate preparation.

#### HISTORY AND STATUS:

Experts for plaintiffs undertook an empirical study of the Kansas City/Jackson County foster care system that documented the allegations, and in 1983 DFS and plaintiffs negotiated a settlement.

In March 1983, the district court issued an opinion approving a consent decree which recognized the legal rights of foster children to be protected from abuse, neglect, and other forms of harm while in state custody. Plaintiffs began monitoring the implementation of the decree.

In 1985 DFS sought modification of the consent decree, plaintiffs countered with a contempt motion, and these issues were settled with a supplemental consent decree that created a monitoring committee. Using a methodology agreed upon by all parties, the committee issued reports every six months identifying areas of compliance and noncompliance.

Compliance improved, but significant areas of noncompliance remained, and in January 1990, plaintiffs filed another contempt motion. A trial took place in January 1992.

On December 7, 1992, Judge Whipple held defendants in contempt of court, primarily due to a "lack of commitment to make a good faith effort to make the consent decree work." The court's order directed defendants to take specific steps to eliminate the noncompliance, and addressed issues of: visitation of children in placement by workers; parental and sibling visitation; foster parent training and licensing; adoption time lines and recruitment of adoptive homes; and caseload size. On the last issue, the court directed the state to lobby for budget increases, and, if it failed to obtain the needed funding, to transfer workers from other counties to ease Kansas City's caseload problems.

In response to the contempt finding, the defendants agreed to commission a panel of national experts to conduct a comprehensive needs assessment of Kansas City's child welfare system, and make specific recommendations designed to help defendants achieve compliance with federal law. The panel began work in mid-1993, and in June 1994 it issued a final report containing over 70 detailed recommendations with time frames.

In early 1994, the parties began to renegotiate the consent decree. A proposed modified consent decree and Operational Guide, mainly based on the panel's findings, were submitted to the court on October 18, 1994. In December 1994, the

parties agreed to a modified consent decree and a phased-in plan to end court oversight of the Division of Family Services, once specific improvements had been made. The judge signed the proposed consent decree and the Operational Guide in December 1994.

In March 1995, a monitoring plan was developed. The Division of Family Services has produced semi-annual compliance reports. When compliance figures were low, the state created an internal "receivership" in October 1995 to address the problems, and the plaintiffs and the state created a problem-solving process to try to avoid further litigation.

As of October 1999, there has been significant progress. Defendants have achieved substantial compliance with three of the sections of the consent decree, and they are expected to exit from the decree completely within the next two years. The parties have been able to work cooperatively to bring defendants into compliance.

#### KEY

#### DOCUMENTS:

Complaint (Mar. 28, 1977)

Order (Apr. 20, 1979) (class certification)

Order (May 2, 1979) (denies defendants' motion to dismiss)

Consent Decree (Mar. 21, 1983) (settles complaint)

Motion to Hold Defendants in Contempt (Feb. 22, 1985) (re: Consent Decree of Mar. 21, 1983)

Suggestions in Support of Plaintiffs' Motion to hold Defendants in Contempt and in Opposition to Defendants' Motion to Modify Consent Decree (Feb., 1985)

Supplemental Consent Decree (July 23, 1985) (settles motion for contempt against defendants and motion to modify by defendants)

Stipulation (Mar. 15, 1988) (continuing the committee and making the methodology a court order)

Memorandum Opinion and Order (Dec. 7, 1992) (holding defendants in contempt)

Proposed Amended Consent Decree and Operational Guide (submitted Oct. 18, 1994)

Consent Decree and Operational Guide (Dec. 1994)

Monitoring Plan (Mar. 1995)

Of Interest:

Caplovitz, D. and Genevie, L., "Foster Children in Jackson County, Missouri: A Statistical Analysis of Files Maintained by the Division of Family Services" (July 21, 1982)

Children's Chronicle, "Special Report on Impact of G.L. v. Zumwalt," Vol. 4, No. 1 (Nov. 1986)

The National Panel's Report, "Building for the Future: A High Quality System of Care for Child Welfare Services in Jackson County, Missouri," Vols. I and II (June 1994)

**GRANT v. CUOMO**

FILE NO.,  
COURT AND

DATE FILED: 25168/85 (N.Y. Sup. Ct., N.Y. City., filed Oct. 28, 1985); 28792 and 28793 (N.Y. App. Div., filed July 9, 1987); 349 (N.Y. Ct. App., Dec. 20, 1988)

CITATIONS: 130 A.D.2d 154 (1st Dept. 1987), aff'd 73 N.Y.2d 820; 509 N.Y.S.2d 685 (1986); 518 N.Y.S.2d 105 (1987)

CLEARINGHOUSE  
REVIEW NO.:

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ATTORNEYS FOR  
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ISSUES: In this class action suit, the plaintiffs sought 1) improved protective and preventive

services for families of children at risk of foster placement due to actual or threatened homelessness; 2) housing assistance as a preventive service for families; 3) and a full range of protective services other than housing-related services. The lawsuit includes claims based upon the New York Child Welfare Reform Act and the AACWA, as well as the New York and United States Constitutions.

#### HISTORY AND STATUS:

In May 1986, the trial court issued a preliminary injunction. The issue before the court was whether the Child Welfare Reform Act of 1979 and attendant state regulations mandate the provision of preventive services to families with children at risk of foster care. With respect to preventive services, the court found that New York law requires, for each child identified as being considered for placement in foster care, a child service plan that identifies the services required by the child, the availability of those services, and the manner in which they are to be provided. The court determined that this service plan is in the nature of a contract, enforceable by the court.

The New York appellate court, however, modified the lower court's order granting a preliminary injunction, holding that the legislature did not intend to impose on social service officials a nondiscretionary duty to provide preventive services in all cases of alleged abuse or maltreatment. The court also held that a child's service plan did not create an enforceable contract requiring the city to provide all available services listed in the plan. Accordingly, it overturned the lower court's declaratory system-wide relief with regard to preventive services. The appellate court did, however, uphold injunctive relief against the City of New York for its failure to investigate reports of suspected child abuse within 24 hours as statutorily mandated.

In a memorandum opinion, the Court of Appeals affirmed the decision of the Appellate Division.

#### KEY DOCUMENTS:

Complaint (Oct. 28, 1985)

Opinion and Order for Preliminary Injunction (N.Y. Sup. Ct.) (May 27, 1986)

Order and Decision (N.Y. Sup. Ct.) (July 9, 1987) (modifying Sup. Ct.'s May 27, 1986 order)

Brief of the Legal Aid Society of the City of New York as *Amicus Curiae*, New York Court of Appeals (Aug. 26, 1988)

**HANSEN v. MCMAHON**

FILE NO.,  
COURT AND  
DATE FILED: CA 000974 (Cal. Super. Ct., Los Angeles City., filed Apr. 17, 1986)

CITATIONS: 193 Cal.App.3d 283 (1987)

CLEARINGHOUSE  
REVIEW NO.: 40,807

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DEFENDANTS: Barbara Motz  
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ISSUES: Homeless families at risk of losing their children to the foster care system brought suit against the California State Department of Social Services (DSS) to challenge the state's refusal to use its Child Welfare Services (CWS) funds for shelter for families. Under state regulations, the CWS program funds could be used for emergency shelter for children who had been removed from their families, but not for shelter for children who lived with their families. The class action sought declaratory and injunctive relief based upon California's statutory scheme that requires preventive efforts in the form of "emergency response" and "family maintenance" services to keep families together, and upon the constitutional rights of privacy, free association, and equal protection.

HISTORY AND  
STATUS: In May 1986, the court granted a preliminary injunction restraining defendants from enforcing state regulations insofar as they were more restrictive than state statutes in defining emergency shelter care to exclude homeless children who remain with their parent or other caretakers. The injunction was upheld on appeal.

Although the injunction did not expressly require DSS to provide emergency shelter to families, that was widely believed to be its practical effect. In the wake of the appeals court decision upholding the injunction, the California legislature enacted

AB 1733, which established a \$70 million state program to assist families in obtaining both temporary and permanent shelter. AB 1733, signed by Governor Deukmejian on September 29, 1987, also makes housing assistance available as a nonrecurring special need under the state's AFDC program, thereby allowing a homeless family to remain together as a family unit, rather than lose their children to foster care.

The case was voluntarily dismissed in 1990.

**KEY**

**DOCUMENTS:**

Complaint (Apr. 17, 1986)

Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction (Apr. 22, 1986)

Preliminary Injunction (May 19, 1986)

**HILL v. ERICKSON**

FILE NO.,  
COURT AND  
DATE FILED: 88 C 0296 (Ill. Cir. Ct., Cook City., Mental Health Div., filed 1988)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 44,096

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ATTORNEY FOR  
DEFENDANTS: Danielle Steimel  
Barbara Greenspan  
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ISSUES: This is a class action suit on behalf of adolescents (male and female) who are wards of the Illinois State Department of Children and Family Services (DCFS) and who are parents or are pregnant. Plaintiffs allege that DCFS fails to provide adequate placements and services to meet their needs and those of their children. As a result, class members are shifted from shelter to shelter and needlessly separated from their young children, in violation of the AACWA, Illinois state law, and the state and federal constitutions.

HISTORY AND  
STATUS: The class was certified on May 12, 1989, and discovery commenced. Plaintiffs obtained an injunction in January 1990 which, in part, resulted in the development of a program and services plan for pregnant and parenting teens. DCFS has issued a positive report on the implementation of this plan.

A comprehensive consent decree was entered on January 3, 1994. The consent decree provides for community-based programs and services for pregnant and parenting teens who are wards of the state, including placements, education, day care, independent living programs, and health care.

After a period of significant non-compliance, defendants entered into negotiations with plaintiffs to create a new case management system. An RFP to accomplish this was issued in November 1997 and awarded in 1998 to Ulich's Children's Home.

Recently, Monica Mahem, M.S.W., from the Children and Family Justice Center at Northwestern University, was selected to be the new consultant under the consent decree. There has also been a change in judges, with Judge Nancy J. Arnold taking over the case. The new judge has requested briefing by the parties on the continuing existence of the class action and consent decree for an upcoming status conference.

**KEY**

**DOCUMENTS:**

Motion of Unnamed Class Member for Temporary Restraining Order (Dec. 22, 1988)

Amended Complaint (Jan. 12, 1989)

Preliminary Injunction Order (Jan., 1989)

Motion for Class Certification (Feb. 7, 1989)

Plaintiffs' Memorandum In Support of Motion for Class Certification (Apr. 14, 1989)

Class Certification Order (May 12, 1989)

Agreed Injunction (Jan., 1990)

Final Consent Decree (Jan. 3, 1994)

**J.J. v. LEDBETTER**

(also known as J.J. v. EDWARDS)

FILE NO.,  
COURT AND  
DATE FILED: CV180-84 (S.D. Ga. filed May 12, 1980)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This action was brought as a statewide class action for declaratory and injunctive relief on behalf of birth parents whose children were placed in the temporary custody of the Georgia Department of Human Resources. Plaintiffs claimed that they had been denied access to their protective services case files and had been denied services to which they were entitled. Plaintiffs claimed that they were entitled to fair hearings to review reductions or denials of services or visitation. Plaintiffs' original claims were based on Title XX of the Social Security Act and the Due Process Clause, as well as regulations implementing the federal Child Abuse Prevention and Treatment Act.

Plaintiffs later amended the complaint to add claims under the AACWA, that the state was obligated to implement a case review system, including case plans, periodic case reviews, and procedural safeguards of parents' rights, as well as a system of fair hearings.

HISTORY AND  
STATUS: The parties reached a settlement of some of the issues in the case, "Services to Birth Parents of Children in Protective Services or Foster Care." The settlement contained specific provisions concerning visitation, case plans, reunification

services, and access to records.

The court entered the first of three final orders in August 1984, adopting the parties' settlement. In this order, however, the court refused to require "fair hearings."

In September 1984, the court issued a second order which vacated the previous "fair hearings" ruling and gave the plaintiff parents an entitlement to procedural due process when their social services or visitation rights were terminated.

The third order, in January 1985, set forth guidelines for the procedural due process rights guaranteed by the second order. This order incorporates by reference procedures already contained in state regulations regarding case plans and case reviews. The order also sets forth additional requirements for case plans and establishes the parents' rights to fair hearings concerning the denial, reduction, and termination of services.

As of January 2000, plaintiffs are still monitoring compliance with the court orders.

#### KEY

#### DOCUMENTS:

Amended Complaint -- Class Action (May 27, 1980)

Motion for Class Certification (Dec. 8, 1980)

Amended and Supplemental Complaint (Jan. 31, 1982)

Order (Aug. 27, 1984) (settles access to protective services files and provision of services to birth parents denied fair hearing and due process)

Order (Sept. 21, 1984) (vacates "Part C" of Aug. 27, 1984 order, concludes that parents are entitled to procedural due process)

Order (Jan. 18, 1985) (due process for fair hearings)

Judgment (Jan. 21, 1985) (dismisses case)

Order (Feb. 26, 1985) (amends judgment)

**JANE DOE v. TOWEY**

FILE NO.,  
COURT AND  
DATE FILED: 94-1696-CIV-Ferguson (S.D.Fla., amended complaint filed Sept. 22, 1994)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This case challenges practices of the state of Florida, denying undocumented immigrant children access to courts and child welfare services, including foster care. The complaint alleges equal protection violations, discrimination, cruel and unusual punishment, and failure to protect from harm.

**HISTORY AND  
STATUS:**

Due to defendants' refusal to respond to discovery requests, on grounds of privilege, plaintiffs filed a separate public records case in state court.

A settlement agreement has been entered and administrative rules have been promulgated requiring the state to provide services to these children. As of October 1999, no new action has been taken on the case.

**KEY  
DOCUMENTS:**

Amended Complaint for Injunctive and Declaratory Relief (Sept. 22, 1994)

Plaintiffs' Motion for Class Certification, and Memorandum of Law (Sept. 26, 1994)

Plaintiffs' Motion for Partial Summary Judgment, and Memorandum of Law (Oct. 25, 1994)

**JANE T. v. MORSE**

FILE NO.,  
COURT AND  
DATE FILED: S-359-86-WnM (Vt. Super Ct., Washington City., filed Aug. 28, 1986)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This class action lawsuit was brought on behalf of all children with disabilities in state custody, against the Vermont Department of Social and Rehabilitation

Services, the Department of Mental Health, the Agency of Human Services, and the Department of Education. The complaint describes the fragmented, disjointed, and uncoordinated character of the child welfare system.

The class members are children with disabilities and adolescents who are, have been, or will be in the custody of the Department of Social and Rehabilitation Services (SRS).

The lawsuit, seeking declaratory, injunctive, and compensatory relief, was filed to rectify a long-term failure to provide preventive and protective child welfare, education, mental health, home based, residential and other supportive services. Plaintiffs alleged that the state has violated Vermont's juvenile and truancy laws, the AACWA, the Rehabilitation Act of 1973 (§504), the Individuals with Disabilities Education Act, and the Vermont and United States Constitutions.

#### HISTORY AND STATUS:

The complaint was filed in August 1986, and the class was certified in June 1987. The court denied the defendants' motion to dismiss the action against the defendants in their individual capacities, thereby rejecting defendants' arguments based on sovereign immunity and absolute and qualified official immunity.

On April 18, 1988, the Court, pursuant to a stipulation of the parties, granted plaintiffs' motion to dismiss the cause of action for intentional infliction of emotional distress. Subsequently, in an opinion dated October 31, 1989, the Court denied defendants' motion to dismiss a cause of action for violation of a right to treatment under Vermont mental health statutes.

In Fall 1992, the parties nearly reached a settlement. Defendants, however, changed their position, and active litigation was resumed.

In March 1993, plaintiffs filed a motion to amend the complaint, to clarify that they are seeking money damages only for the four named plaintiffs, not for the class. The court granted the motion to amend on November 30, 1993.

In January 1994, defendants filed a motion to show cause why the class should not be decertified, arguing that the four named plaintiffs were no longer representative of the class. This motion was denied on August 29, 1994.

Defendants filed a motion for partial summary judgment on October 5, 1994. This motion was denied.

A status conference was held in May 1997, and subsequently, the court set the case for a two week trial beginning November 10, 1997.

Prior to the end of the summer, plaintiffs' counsel met with the Next Friends and

contacted the four named plaintiffs. Due to the outdated discovery materials and a severe shortage of resources available to plaintiffs' counsel, a decision was made to stipulate to a dismissal of plaintiffs' class claims for declaratory and injunctive relief and to negotiate a settlement for compensatory damages for the four named plaintiffs.

In October 1997, a stipulation of dismissal was executed by the parties and filed with the court. Concurrent with this offer, an offer was presented to defendants' counsel for settlement of the named plaintiffs' compensatory claims. On November 17, 1997, defendants' counsel accepted the settlement proposal concerning compensatory claims for the named plaintiffs.

A formal stipulation of dismissal was filed by the parties on March 5, 1998. The court accepted it and issued an order on March 12, 1998. The named plaintiffs signed appropriate releases and their claims were settled.

#### KEY

#### DOCUMENTS:

Complaint -- Class Action (Aug. 28, 1986)

Opinion and Order (June 12, 1987) (granting plaintiffs' motion for class certification)

Opinion and Order (Dec. 22, 1988) (denying defendants' motion to dismiss claims against named state officers in their individual capacities)

Plaintiffs' Motion to Amend Complaint (Mar. 29, 1993)

Order Granting Motion to Amend Complaint (Nov. 30, 1993)

Order Denying Motion to Show Cause (Aug. 29, 1994)

Stipulation to Dismissal of Plaintiffs' Class Action Claims for Declaratory and Injunctive Relief (Oct., 1997)

Stipulation of Dismissal (Mar. 5, 1998)

Order of Dismissal (Mar. 12, 1998)

**JEANINE B. v. THOMPSON**

FILE NO.,  
COURT AND  
DATE FILED: No. 93-C-0547 (E.D. Wisc., filed June 1, 1993)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This class action was brought on behalf of children in the Milwaukee county child welfare system, which has approximately 5,000 children in its custody; in addition, 10,000 children each year are the subject of abuse or neglect reports.

The complaint alleges that these children are deprived of timely and appropriate investigations of abuse/neglect reports, do not receive services that might avert their entry into foster care, do not receive appropriate case planning and services once they enter foster care, are placed in inadequate and unmonitored foster homes (in which they are often abused or neglected), are not provided services that would

allow them to return home, and children who cannot return home are not provided with services that would allow them to be adopted. In addition, the complaint alleges that children with disabilities in the foster care system are discriminated against in the provision of case planning and services.

The lawsuit names state officials as defendants, and seeks injunctive relief that would ensure that the county's foster care system complies with federal statutory and constitutional law and with Wisconsin state law.

#### HISTORY AND STATUS:

Plaintiffs have been engaged in extensive pretrial discovery since fall 1993. The district court certified the plaintiff class, refused to dismiss the plaintiffs' constitutional, federal statutory, or state law claims in the case, and rejected the efforts of the state of Wisconsin to evade responsibility for the child welfare system deficiencies in Milwaukee.

When the case was about to go to trial, the state enacted legislation and executive measures to remove jurisdiction over the system from the City of Milwaukee to the state itself. In light of this change the court postponed the trial.

Affidavits submitted by the plaintiffs in the fall of 1996 demonstrated that the state's planned takeover had not translated into real systemic changes that would alleviate the continuing deficiencies in the system. Caseloads in Milwaukee remained dangerously high. In addition, Milwaukee did not have a sufficient number of foster care placements. These problems were not addressed by the state's plan.

The plaintiffs asked the court for emergency relief, but the judge refused to rule on this request. The plaintiffs, in May 1997, then asked the Court of Appeals for the Seventh Circuit to step in and issue an injunction to bring the protective services into compliance with federal and state law. The Seventh Circuit declined to step in, and the district court subsequently denied plaintiff's request for a preliminary injunction. In January 1998 the state took over the child welfare system. The district court requested briefing on the enforcement of the AACWA after Blessing v. Freestone, (117 S.Ct. 1353 (1997)), and on January 30, 1998 the district court held that the AACWA was enforceable only as to case plan and review requirements. The court also dismissed all remaining claims against the county defendants as moot due to the state's takeover of the child welfare system. The court subsequently ordered the parties to conduct discovery on the limited AACWA claims.

Plaintiffs, after conducting a six-month investigation of the status of the state takeover, asserted in June of 1999 that the state, which was now the direct administrators of the system, was failing to protect children in its new role. In June of 1999, one and a half years after the effective date of the state takeover, plaintiffs filed a motion to supplement their complaint to re-allege the substantive due process claims that were previously dismissed by the court on March 3, 1997.

The court dismissed the claims at that time, stating that the planned state takeover satisfied the state's responsibilities as supervisor of the county-run system.

KEY

DOCUMENTS:

Complaint (June 1, 1993)

Plaintiffs' Motion to Certify Class (July 1, 1993)

District Court Order Dismissing the CAPTA Claim (June, 1997)

7th Circuit Memo (May, 1997)

Plaintiff's Motion to Supplement Complaint (June 2, 1999)

**JESSE E. v. NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES**

FILE NO.,  
COURT AND  
DATE FILED: 90 CIV. 7274 (S.D.N.Y., filed Nov. 13, 1990)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This federal class action was filed on behalf of thousands of children in the custody of the New York City Commissioner of Social Services who were separated without justification from their siblings in foster care placements. The suit challenges the practice of unnecessarily separating siblings in foster care and failing to provide them with meaningful visitation when separation is appropriate. Plaintiffs assert that these practices violate their freedom of association under the 1st Amendment, their right to due process, and rights created by state law and social service regulations.

As relief, plaintiffs have requested the court to require that siblings in foster care be placed together unless doing so would harm them, that decisions to separate siblings initially or maintain them in separate placements be made by an independent professional, and that siblings who cannot be placed together be given visitation.

HISTORY AND  
STATUS: The court certified a class consisting of all separated siblings in foster care in New

York City. The plaintiffs filed a motion for a preliminary injunction to stop the implementation of a sibling reunification project because it permitted non-professionals to decide whether to reunite siblings who have been separated in foster care, in many cases for extended periods of time. A hearing on this motion and a trial on the merits was scheduled for October, 1992, but the parties then settled the case on the eve of the trial.

In December 1992, the parties submitted a proposed settlement to the court for approval, and notice was given to the class. The court approved the settlement on April 19, 1993.

The settlement created a standard and procedure for determining whether siblings may be separated. The agreement requires the city to place siblings together in foster care unless such placements are contrary to the siblings' health, safety, or welfare, as determined by a Sibling Facilitator (a professional with a Master's Degree in Social Work) in consultation with appropriate professionals in medical, psychiatric, educational, and other disciplines. In addition, the agreement requires that separated siblings be placed in as close geographical proximity as possible and be afforded at least bi-weekly visitation and other opportunities for communication with one another. The agreement permits emergency separation of sibling groups if no immediate vacancies are available, but requires that the siblings be reunited within 30 days.

The settlement was to be fully implemented by October 19, 1994, after the hiring and training of an adequate number of social work professionals, who were to begin reviewing all incoming sibling cases as well as a backlog of approximately 20,000 separated siblings in the existing caseload.

The case remained in an active monitoring phase through 1999.

(Children's Rights, Inc. served as *amicus curiae* in this case, with respect to the interests of plaintiffs who are also class members in Wilder v. Bernstein.)

#### KEY

#### DOCUMENTS:

Complaint (Nov. 13, 1990)

Motion for Preliminary Injunction and Consolidation (Nov. 21, 1990)

Plaintiffs' Memorandum in Opposition to Motion to Dismiss (May 8, 1991)

Order Certifying Class (June 26, 1991)

Motion for Preliminary Injunction, and Memorandum in Support (Mar. 9, 1992)

Memorandum of Amicus American Civil Liberties Union (May 26, 1992)

Parties' Proposed Pre-trial Order (Oct. 6, 1992)

Stipulation and Proposed Order of Settlement (Dec. 1992)

Order Approving Settlement (Apr. 19, 1993)

**JONES-MASON v. ANDERSON**

FILE NO.,  
COURT AND  
DATE FILED: No. 982959 (Cal. App. Dept. Super. Ct, filed Dec. 4, 1996)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This case sought a writ of mandate ordering the California Department of Social Services (CDSS) to promulgate regulations governing the group care of foster children under the age of six. In California, very young foster children may be placed in group care only for a limited period of time and for specific reasons related to the best interests of the child. In 1993, the California legislature passed a statute that required CDSS to develop standards and regulations for group homes and temporary care facilities that house children under the age of six. CDSS had not complied with this law.

HISTORY

AND STATUS: After CDSS did not comply with the 1993 statute, plaintiffs sought a writ of mandate ordering CDSS to promulgate the regulations.

On February 27, 1997, the parties filed a stipulation to stay proceedings. This settlement provides for development of regulations by August 25, 1997. The regulations became final April 1, 1998.

**KEY**

**DOCUMENTS:**

Plaintiffs' Petition (Dec. 4, 1996)

Stipulation to Stay Proceedings (Feb. 27, 1997)

**JOSEPH A. v. N.M. DEPT. OF HUMAN SERVICES**

FILE NO.,  
COURT AND  
DATE FILED: 80-623 JB (D.N.M., filed July 25, 1980)

CITATIONS: 575 F.Supp. 346 (D.N.M. 1982) (Consent Decree)

CLEARINGHOUSE  
REVIEW NO.: 31,172

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ISSUES: This action was based on claims under the AACWA brought on behalf of children in custody of the New Mexico Department of Human Services (DHS) who were victims of foster care "limbo." The case sought to establish their rights to reasonable and fair decision-making with regard to access to adoption and to permanence, stability, and a family life.

## HISTORY AND STATUS:

The district court ruled that while plaintiff children had no inherent constitutional liberty interest in permanence, stability, or placement for adoption, they might have constitutionally protected due process rights based upon property interests arising from their entitlements under federal statutes such as the AACWA, or under state law.

On September 23, 1983, the court approved a consent decree. The consent decree sets forth a detailed scheme for restructuring New Mexico's foster care system to ensure that foster children do not get lost in the system, and requires DHS to establish permanent plans for foster children within six months of their entry into care. In addition, the decree contains provisions governing employee qualifications, social worker training, case planning, caseload size, adoptions, computerized records, citizen review boards, and monitoring of compliance.

Over the years, and under constant pressure from plaintiffs, DHS increased compliance with consent decree provisions, and in 1988 sought to be relieved from court-ordered supervision.

A crucial provision of the consent decree mandated that a compliance monitor be in place at all times, but monitoring was suspended during the 1988 evidentiary hearings and DHS refused to reinstate the monitor. The court ordered appointment of a monitor in March 1989, but it took a year and two contempt motions before DHS executed a contract with a jointly selected monitor, and then it took another court order to force DHS to provide adequate access to the system.

The monitor's January 1991 report revealed serious noncompliance in critical areas. In March 1991, a trial was held on two contempt motions. After trial the court-appointed special master recommended that the district court find DHS in compliance because it had incorporated consent decree requirements into state regulations. Instead, the court ruled that monitoring would continue until DHS had actually institutionalized the reforms in the New Mexico child welfare system.

DHS then sought to settle the contempt motions and in June 1992, after protracted negotiations, the parties agreed to a settlement that would ensure implementation of the decree, and its termination, by August 1994. High level state officials rejected the settlement, and the state attorney general's office took over from the DHS law department.

Findings of fact and conclusions of law were submitted to the special master in Fall 1992. On April 30, 1993, the Special Master found that the defendants had been in substantial compliance with the consent decree for 12 months and recommended that the decree be terminated. On September 14, 1993, the district court adopted the findings of the Special Master and terminated the decree. On June 30, 1994, the court denied plaintiffs' motion for reconsideration and ordered the decree

terminated.

On July 18, 1994, plaintiffs appealed to the Tenth Circuit; their appeal brief was filed October 24, 1994. The plaintiffs won this appeal on November 9, 1995 and the consent decree was reinstated. The Tenth Circuit denied a petition for rehearing en banc on December 14, 1995. The Supreme Court of the United States denied the defendants' petition for *certiorari* on May 13, 1996.

A motion for contempt was filed on January 31, 1996. In January 1997, the special master revised his ruling and recommended that the state agency be held in contempt for violating the consent decree several years ago.

In February 1998, after the parties had been negotiating through 1997, the court entered a stipulated Exit Plan, which replaces the prior consent decree and sets forth the improvements that must be made by defendants before the case can be resolved. A neutral monitor was appointed whose decisions were final and unappealable for 1998 and 1999. For the first time in this lawsuit the monitor not only read case records, but also interviewed management and field staff.

After it became obvious that defendants have not committed to complying with the Exit Plan and after three compliance reports showed lack of progress, plaintiffs filed a motion for contempt in October 1999. The motion is pending.

#### KEY

#### DOCUMENTS:

Complaint -- Class Action (July 25, 1980)

Consent Decree (Sept. 23, 1983) (resolved class action suit)

Special Master's Report (Apr. 30, 1993)

Court Orders Terminating Consent Decree (June 30, 1993 and Sept. 14, 1993)

Plaintiffs' Brief on Appeal (Oct. 24, 1994)

Motion for Contempt (Jan. 31, 1996)

Court-Ordered Exit Plan (Feb. 23, 1998)

Motion for Contempt (Oct. 1999)

**JUAN F. v. O'NEILL**

FILE NO.,  
COURT AND  
DATE FILED:

Civ. Action No-H-89-859 (AHN) (Conn., filed Dec. 19, 1989); No. 93-7714 (2nd Cir., Oct. 13, 1994)

CITATIONS: 37 F.3d 874 (2nd Cir. 1994)

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES:

This is a class action lawsuit charging that the Connecticut Department of Children and Youth Services (DCYS) is grossly underfunded and understaffed, child abuse complaints are not being investigated, social workers are overwhelmed by high caseloads, and the dwindling supply of foster parents is underpaid and inadequately trained.

Plaintiffs brought claims under the reasonable efforts provisions of the AACWA, the Due Process Clause, and the "right to liberty and family integrity" protected by the 1st, 9th and 14th amendments.

## HISTORY AND STATUS:

Shortly after the lawsuit was filed, a federal judge assigned to the case for settlement purposes established a mediation panel consisting of the judge, an expert designated by plaintiffs, and an expert designated by the state. This panel interviewed department employees, examined documents, and held public hearings to determine the problems facing DCYS and how those problems should be resolved. The panel agreed on a settlement in January 1991, 13 months after the lawsuit was filed.

The settlement called for drafting detailed manuals to guide the implementation of each section of the decree. The manuals were completed and incorporated into the consent decree in September 1992. In December 1992, with the consent of the parties, the court appointed a monitor to oversee implementation of the decree.

In spring 1993, a major obstacle to implementation arose when the legislature severely cut the funding requested by the agency. Plaintiffs invoked the dispute resolution process set forth in the consent decree, on the grounds that the budget cuts would place the agency out of compliance in four crucial areas: caseworker staffing; hiring of nurse-practitioners; foster care board payments; and improved services.

The monitor, after a hearing, found that defendants did not have a plan that would achieve substantial compliance, given the level of funding available. After a hearing in June 1993, the court adopted the monitor's report and recommendations, and issued an order setting a timetable for attaining the hiring goals and the foster care board rates required by the consent decree and the implementing manuals.

Defendants appealed this order, arguing that the court erred in modifying the decree based on predictions of future non-compliance. In October 1994, the Second Circuit rejected this challenge, and affirmed the court's order.

The implementation of the Consent Decree was greatly affected by the tragic deaths of three children who died within a three week period in March 1995, after their at-risk status had been known to DCYS. As a result, reports of child abuse increased dramatically, resulting in a 33% increase in the Department's caseload. Compliance efforts have since focused a great deal on the response to this increased caseload. The plaintiffs' attorneys and the Court Monitor forced the State to hire an additional 200 social workers.

In early 1996, the plaintiffs returned to the Court Monitor and to the federal court to enforce compliance after the Department failed to promptly implement a plan to expand such resources as foster care, day treatment, respite care, and crisis counseling.

As of July 1999, the state is still failing to provide adequate resources, both to

children in their own homes at risk of abuse and neglect, and those children in foster care custody. The plaintiffs continue to hold compliance hearings before the Court Monitor and federal court judge.

KEY

DOCUMENTS:

Complaint (Dec. 19, 1989)

Consent Decree (Jan. 7, 1991)

First Implementation and Monitoring Report of the DCYS Monitoring Panel (Dec. 9, 1991)

Consent Decree Manuals (Sept. 1, 1992)

Order (appointing monitor) (Dec. 1, 1992)

Order (re: implementation) (1993)

Second Circuit Opinion (Oct. 13, 1994)

**K.L. v. STATE OF NEW MEXICO**

(also known as J.B. v. VALDEZ)

FILE NO.,

COURT AND

DATE FILED: CIV-93 1350 JB (D.N.M., filed Nov. 17, 1993)

CITATIONS: 186 F.3d 1280 (10<sup>th</sup> C. 1999)

CLEARINGHOUSE

REVIEW NO.: 52,608

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ISSUES:

This a class action lawsuit on behalf of all children with mental and/or developmental disabilities who are in state custody as a result of abuse or neglect, or are known to the state due to an abuse/neglect report, have been alleged to be delinquent, or have otherwise been determined by the state to be in need of services. The case challenges the state's failure to provide these children with appropriate services, care, treatment, education, and access to the judicial system.

Some of these children are inappropriately placed in psychiatric hospitals, detention facilities, or other needlessly restrictive settings. Some live at home, with relatives, or in ordinary foster homes, in placements that cannot provide care and treatment for their special needs. Many of these children have had multiple changes in placement. In many cases, the children's mental condition has worsened, and they have experienced crises in their family, school, and community, due to lack of appropriate care and treatment. Plaintiffs have also suffered discrimination on the basis of their disability, in that the state has refused to take them into state custody to avoid the difficulty and cost of providing services to them.

The case includes claims under the Americans with Disabilities Act, the Medicaid/EPSTDT statutes, § 504 of the Rehabilitation Act, the National Mental Health Planning Act, and the Individuals with Disabilities Education Act. Plaintiffs seek declaratory and injunctive relief. The case also includes constitutional claims, including substantive due process claims regarding adequate treatment and family integrity; and a 1st and 6th amendment claim regarding access to the judicial system.

HISTORY AND  
STATUS:

In March 1994, plaintiffs moved for class certification. In April 1994, defendants obtained an order from the magistrate, limiting plaintiffs' discovery to issues related to class certification and to the situations of the named plaintiffs. This order led to considerable conflict and delay over discovery. On June 26, 1996, the district court denied class certification.

Meanwhile, defendants filed a total of six motions to dismiss, raising numerous

issues including failure to state a claim, *res judicata*, collateral estoppel, and abstention. Other motions seek the dismissal of certain defendants (the state health and education agencies and their administrators) on the grounds that they are not the legal custodians of the plaintiff children and hence are not proper parties, and the dismissal of the Governor as a defendant for lack of personal involvement in the alleged violations. A final motion seeks the dismissal of all claims regarding juvenile detention facilities for lack of jurisdiction and standing, on the grounds that none of the named plaintiffs were in such facilities on the day the complaint was filed.

Plaintiffs responded to these motions. The court granted the defendants' Motion to Abstain on April 11, 1997, dismissing the claims of all children who have been subjects of state abuse/neglect claims, holding that the *Younger* abstention applies. (The *Younger* doctrine requires abstention when federal proceedings would interfere with ongoing state judicial proceedings that implicates important state interests and that affords an adequate opportunity to raise federal claims.)

The claims of children in the delinquency system were dismissed after the named Plaintiffs turned eighteen. Plaintiffs appealed the dismissal and denial of class certification to the Tenth Circuit Court of Appeals.

On August 12, 1999, the Tenth Circuit affirmed the lower court decision in a split decision upholding the denial of class certification, and holding that *Younger* abstention was warranted. The court reasoned that given the continuing jurisdiction of the New Mexico children's court to modify a child's disposition, coupled with mandatory six month review hearings, there were ongoing state judicial proceedings, and the federal case would interfere with proceedings by changing the dispositions and oversight of the children.

On November 3, 1999, Plaintiffs' petition for rehearing *en banc* was denied. Plaintiffs have decided not to seek *certiorari* by the United States Supreme Court

#### KEY

#### DOCUMENTS:

Complaint (Nov. 17, 1993)

Plaintiffs' Motion for Class Certification, and Memorandum of Law (Mar. 31, 1994)

Plaintiffs' Response to Motions to Dismiss (Mar. 31, 1994)

Plaintiffs' Response to Motion to Dismiss All Claims (May 31, 1994)

Plaintiffs' Response to Motion to Dismiss Defendants Burkhart and Heim (May 31, 1994)

Plaintiffs' Response to Motion to Dismiss Defendants Morgan and State Board of Education Members (May 31, 1994)

Plaintiffs' Response to Motion to Strike or to Dismiss for Lack of Standing and Jurisdiction (May 31, 1994)

Order Denying Class Certification (June 26, 1996)

Plaintiffs' Appeal Brief in Chief Regarding Abstention and Denial of Class Certification (Nov. 26, 1997)

**L.J. v. MASSINGA**

FILE NO.,  
COURT AND  
DATE FILED:

No. JH-84-4409 (D.Md., filed Dec. 8, 1984); No. 87-2156 (4th Cir.)

CITATIONS:

838 F.2d 118 (4th Cir. 1988) (affirms granting of preliminary injunction); cert. denied, 488 U.S. 1080, 109 S.Ct. 816; 699 F.Supp. 508 (D. Md. 1988) (approves Consent Decree); 778 F.Supp. 253 (D.Md. 1991) (modifies Consent Decree)

CLEARINGHOUSE

REVIEW NO.: 43,403

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ISSUES:

This is a civil rights action filed on behalf of approximately 2,500 foster children in Baltimore, seeking injunctive relief for class members and damages for the five named plaintiffs.

The plaintiffs' allegations of widespread, systemic abuses in the Baltimore foster system were based in part on a random study that reviewed 149 cases, and concluded that 25% of the children were likely to have been mistreated in foster care. The study, together with other evidence, documented major systemic

problems, including inappropriate placement of children; low foster care payments; an insufficient number of homes combined with a lack of recruitment efforts; inadequate health care; failure to train foster parents and caseworkers; infrequent caseworker visits; and failure to provide services to children placed with relatives.

## HISTORY AND STATUS:

In July 1987, finding that foster children were likely to suffer severe physical and emotional injury and that their constitutional right to protection while in state custody was in jeopardy, the federal district court issued a preliminary injunction.

The district court denied the defendant officials' claim of qualified immunity from damages for harm suffered by foster children. The court held that under the AACWA and the 14th Amendment, foster children were entitled to care which protected them from harm while in the state's custody.

The court's order directed the agency to monitor each child in foster care, particularly those in homes that had been the subject of reports of mistreatment; to assign sufficient staff and resources to ensure that every foster child receives appropriate and consistent medical care; and to provide the juvenile court and the child's attorney with written reports of any complaints of maltreatment of foster children within five days of receipt of such complaints, along with written reports of any action taken on the complaints.

The Fourth Circuit, in February 1988, upheld the preliminary injunction and affirmed the denial of immunity on grounds that the AACWA created enforceable rights; the appeals court did not reach the 14th Amendment argument.

In May 1988, defendants filed a petition for *certiorari* to the United States Supreme Court, challenging the denial of qualified immunity. The Solicitor General filed a brief recommending that the petition be granted, but the Supreme Court denied *cert.* in early 1989. Shortly thereafter, the state and the named plaintiffs agreed to settlements in the damages cases totaling more than \$800,000.

In September 1988, the class claims were settled and a consent decree was approved by the court. The decree provides relief in a wide range of areas including: caseload standards, foster parent and caseworker training, provision and monitoring of health care, reporting of suspected abuse or neglect of foster children to child's counsel, and a study of the quality of kinship care provided by relatives with whom the state places children.

In October 1989, when the kinship care report was due, the assessments of children in kinship care (a population of about 500) had just begun. However, partly due to concerns expressed by individual children's attorneys, plaintiffs' counsel began negotiations to extend the 1988 consent decree's protections to children in kinship care. In August 1990, the final kinship care report was released, confirming

plaintiffs' counsel's view that systemic deficiencies in the kinship care system placed children at as much risk of severe physical and emotional harm as children in regular foster care experienced.

The modification of the decree, extending protections to children in kinship care, was approved by the court in October 1991. An important difference between the foster care standards in the original decree and the kinship care standards is that the latter impose a cap on each caseworker's caseload, while the former impose only a standard for average caseload size. In recent years, although defendants have complied with the cap on kinship care caseloads, they have failed to comply with the standard for foster care caseloads.

In the 1990s, the kinship care population grew quickly, so that in 1994 there were about 3,000 children in kinship care, and another 3,000 in non-relative foster care.

In December of 1997 plaintiffs were experiencing monitoring problems due to a lack of funding and had received 13 compliance reports, in which defendants reported compliance with some, but not all, of the requirements of the consent decree. As of October 1999 plaintiffs continue to monitor compliance, but are having difficulty obtaining compliance with numerous provisions of the decree.

#### KEY

#### DOCUMENTS:

Complaint (Dec. 8, 1984)

Plaintiffs' Response to Defendants' Motion for Partial Summary Judgment (Mar. 1985)

Memorandum and Order (July 27, 1987) (concerning plaintiffs' motions for preliminary injunction, sanctions, and a default judgment)

Memorandum and Order (July 27, 1987) (denying rehearing for defendants' renewed motion for a partial summary judgment filed Oct. 20, 1986)

Order Approving Consent Decree (Sept. 27, 1988)

Modification of Consent Decree (Dec. 12, 1991)

**LASHAWN A. v. BARRY**

(also known as LASHAWN A. v. DIXON)

FILE NO.,  
COURT AND  
DATE FILED: 89-CV-1754 (TFH) (D.D.C. June 20, 1989)

CITATIONS: 762 F. Supp. 959 (D.C. 1991), aff'd, 990 F.2d 1319 (D.C. Cir 1993), cert. denied, 114 S.Ct. 691 (1994), 69 F.3d 556 (D.C. Cir. 1995), vacated, 74 F.3d 1389 (D.C. Cir. 1996)(en banc), 87 F.3d 1389 (D.C. Cir. 1996)(en banc), Aff'd, No. 94-7044 (D.C. Cir. Oct. 30, 1996), cert. denied 117 S.Ct. 2431 (1997).

CLEARINGHOUSE  
REVIEW NO.:

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**ISSUES:** This civil rights class action was brought on behalf of children placed in foster care under the supervision of the District of Columbia's Department of Human Services (DHS) and children who have been abused and neglected and who are or should be known to the Department by virtue of that abuse or neglect. The complaint charges violations of the AACWA, due process, the District of Columbia Prevention of Child Abuse and Neglect Act of 1977, the federal Child Abuse Prevention and Treatment Act, and the District of Columbia Youth Residential Facilities Licensor Act of 1986.

**HISTORY AND  
STATUS:**

The complaint was filed on June 20, 1989. A trial took place in February 1991, and a judgment of liability was entered in April 1991. A negotiated remedial order was approved by the court in August 1991.

In September 1991, defendants appealed the liability order to the D.C. Circuit, raising, among other issues, the impact of Suter v. Artist M. on the case. The district court's order was affirmed in April 1993, on the basis of D.C. law.

The consent decree directs the District DHS to develop policies and procedures in the areas of protective services (investigation of reports of child abuse and neglect); family preservation and preventive services; child placement (evaluation, planning, and supervision); case reviews; adoption; staffing (qualifications, training, and caseload standards); resource development (foster homes, adoptive homes, community based services); review of contracts with private providers and agencies; and development of a unitary computerized information system.

Implementation and enforcement of the consent decree are ongoing. Plaintiffs filed a motion to hold defendants in contempt in March 1994. In response to this motion, the court ordered the creation of limited receiverships in October 1994, to address specific problems with corrective action, resource development, and protective services.

When all attempts to assist the District's efforts to implement reforms failed, the plaintiffs requested the appointment of a receiver to assume total control of the entire child welfare system. In 1995, the judge found the defendants in contempt of court and ordered the appointment of a general receiver.

While the court granted the receiver far-reaching authority, the beginning of the receivership was marked by some difficulties as the receiver struggled to organize a staff, to resist the efforts of District government to sabotage his efforts, and to establish relationships with community organizations.

The District government has been extremely resistant to receivership, and has continued to fight the receiver's authority in the courts. The plaintiffs have continued to wage legal battles to ensure that the receivership will survive and that the theoretical authority granted by the court actually translates into the capacity to bring about system-wide reform.

Recent achievements of the receivership include expanding public-private partnerships and community-based services; developing additional appropriate placements for children in need, including more placements in D.C.; facilitating sibling and family visitation; continuing to lower caseloads for social workers; increasing adoption rates; increasing staff training; and implementing an Adoption and Foster Care Analysis and Information System.

Plaintiffs' counsel and the court-appointed monitor, the Center for the Study of Social Policy, remain engaged in efforts to ensure compliance with the remedial order and better service for children.

#### KEY

#### DOCUMENTS:

Complaint (June 20, 1989)

Plaintiffs' Motion to Certify Class Action, and Memorandum in Support (July 12, 1989)

Final Remedial Order (Aug. 26, 1991)

Plaintiffs/Appellees' Brief (Sept. 25, 1992)

Appellees' Final Brief (Sept. 29, 1992)

Plaintiffs' Motion for an Order Holding Defendants in Contempt of Court, and Memorandum in Support (Mar. 21, 1994)

Plaintiffs' Memorandum in Further Support of Contempt Motion (Apr. 27, 1994)

Findings from a Case Record Review of Foster Care & Protective Services Cases (monitor's report) (Aug. 12, 1994)

Order Imposing Limited Receivership (Oct. 4, 1994)

Plaintiffs' Motion for Contempt and General Receivership (Apr. 4, 1995)

Plaintiffs' Reply (Apr. 26, 1995)

Order Imposing General Receivership (May 22, 1995)

**LETISHA A. v. MORGAN**

FILE NO.,  
COURT AND  
DATE FILED: No. 91 JA 802 (Ill. Cir. Ct., Cook City. Child Protection Div., filed July 8, 1993)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This is a class action on behalf of all abused and neglected children in state custody whom the state placed in the James Bank Group Home, a deplorable placement for developmentally delayed children. The action alleged that residents of the home were raped and denied food and prescription medications. In addition, no therapeutic programs existed and the physical facility was filthy and hazardous.

HISTORY AND  
STATUS: The state shut down the home and revoked its license one week after the case was filed.

KEY  
DOCUMENTS: Complaint (July 8, 1993)  
  
Settlement Order (July 15, 1993)

**LINDSEY v. WARREN COUNTY CHILDREN & YOUTH SERVICES**

FILE NO.,  
COURT AND  
DATE FILED: No. 93-267 Erie (Cohill) (W.D.Pa., filed Aug. 31, 1993)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This case was brought on behalf of parents coerced into making placements of their children with relatives, or making other changes in family composition, by the county agency's threats to file a dependency petition; parents coerced into entering into written "voluntary" placement agreements; and parents denied initial or review hearings regarding the basis for a compelled change in family composition.

The case includes AACWA and due process claims, claims under state child welfare law, and a tort claim for infliction of emotional distress. Plaintiffs seek declaratory and injunctive relief to reform the county's practices regarding due process for parents and informal and "voluntary" placements of children, and damages for the named plaintiffs.

HISTORY AND  
STATUS:

On September 3, 1993, the court granted a temporary restraining order, ordering the defendants to refrain from interfering with the reunification of the named plaintiffs' family.

In October 1993, defendants filed a motion to dismiss, raising 11th Amendment issues and arguing that some claims should be dismissed in light of Suter v. Artist M. In June 1994, the court denied the motion as to plaintiffs' federal claims, but dismissed a state constitutional claim as barred by the Eleventh Amendment.

In July 1994, plaintiffs filed a class certification motion and a motion to amend the complaint (to include a more specific class definition). In December 1994, the court ordered that plaintiffs conduct discovery regarding class certification issues, by March 1995. Briefing on the class certification motion was completed in May 1995, and class certification was denied in 1996.

In March 1996, the court granted summary judgment in favor of all defendants except for the individual caseworker. The principal reason given for the entry of summary judgment was that there was no basis for liability against Warren County Children and Youth Services or the caseworker's superiors because the court believed those claims were based on *respondeat superior*, which is not available as a theory for §1983 liability.

A bench trial was held on the remaining claims against the caseworker in November 1996. The court then entered judgment in her favor, finding that she had advised the plaintiff of all her legal rights before separation of the family. An appeal was filed to the United States Court of Appeals for the Third Circuit and the case was submitted on briefs September 23, 1997. In late 1997, the Third Circuit denied the plaintiffs' appeal. No further action has been taken on this case.

KEY  
DOCUMENTS:

Amended Complaint (Jan. 13, 1995)

Response to Defendants' Motion to Dismiss (Nov. 12, 1993)

Order on Motion to Dismiss (June 16, 1994)

Motion for Class Certification (July 21, 1994)

Order Denying Class Certification (June 25, 1996)

**LOFTON V. BUTTERWORTH**

FILE NO.,  
COURT AND  
DATE FILED:

DCA CASE No. 99-10058  
(District Court, Southern District of Fla., Key West Division, filed April 1999)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
ADULT PLAINTIFFS:

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Gerald Curington  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, FL 32399-1050

**ISSUES:**

Plaintiffs sued the Attorney General and the Department of Children and Families to enjoin them from enforcing Florida's statute of prohibiting homosexuals from adopting. Adult plaintiffs include: Lofton, who has been a foster parent of a nine year old almost since birth; Houghton, who has been a legal guardian of a child for several years; Smith and Gilmore, who are two individuals that wish to adopt but are precluded; and the Bradleys, a married couple who wish to provide for the testamentary guardianship of their minor child by Smith. Child plaintiffs are John Roe and John Doe, the children of Lofton and Houghton. Plaintiffs sue under the substantive due process and equal protection clauses of the federal Constitution.

**HISTORY AND  
STATUS:**

The complaint was filed in April 1999. Defendants moved to dismiss. Plaintiffs filed their response to the motion to dismiss and are awaiting oral argument. Discovery is proceeding.

**KEY  
DOCUMENTS:**

Complaint (Apr. 1999)

**M.E. v. BUSH**

(also known as M.E. v. CHILES; M.E. v. WILLIAMS)

FILE NO.,  
COURT AND  
DATE FILED: 90-1008-CIV-MOORE (filed April 16, 1990)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 45,828

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ISSUES: Plaintiffs allege that the Department of Children and Families failed to provide necessary therapeutic services for children in state custody, both dependent and delinquent, in violation of federal substantive and procedural due process, AACWA, the ADA, § 504 of the Rehabilitation Act, Title XIX of the Social Security Act, and the Juvenile Justice Delinquency Prevention and Treatment Act.

HISTORY AND  
STATUS: The parties negotiated a stipulation staying the litigation pending compliance with certain conditions and implementation of a plan entitled "Building Futures for Florida's Children." The court approved the stay on March 6, 1992.

In 1993, the parties agreed to an extension of the stay, requiring the state to conduct an independent study of the financing and program implementation process for the children's mental health system.

In late 1994, the court lifted the stay. Plaintiffs filed an updated motion for class certification and a second amended complaint in February 1996. The court, from the bench, granted plaintiffs' motion for class certification and denied defendants' motion for abstention on April 3, 1997.

A third amended complaint, along with another updated motion for class certification, was filed on September 3, 1997. Defendants again filed a motion to abstain. An order granting class certification was signed on January 21, 1998. An order denying defendants' motion to abstain was signed April 9, 1998. The parties are currently negotiating a settlement.

#### KEY

#### DOCUMENTS:

Amended Complaint (June 20, 1990)

Plaintiffs' Response to Defendants' Motion to Dismiss and Motion for More Definite Statement (Aug. 17, 1990)

Plaintiffs' Motion for Class Certification (July 25, 1990)

Order on Motion to Dismiss (Sept. 21, 1990)

Order Approving Stipulation (re: stay) (Mar. 6, 1992)

Third Amended Complaint (Sept. 3, 1997)

Order on Class Certification (Jan. 21, 1998)

Order Denying Motion to Abstain (Apr. 9, 1998)

**M.W. v. DAVIS**

FILE NO.,  
COURT AND  
DATE FILED: DCA CASE No. 98-3547

CITATIONS: 722 So. 2d. 966 (Fla. 4<sup>th</sup> DCA 1999); 729 So. 2d. 481 (Fla. 4<sup>th</sup> DCA 1999)

CLEARINGHOUSE  
REVIEW NO.:

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Michael Herskovitz  
Shutts & Bowen, LLP  
Counsel for Arlonia Davis and Lock Towns  
1500 Miami Center  
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ISSUES: This case addresses whether a foster child in the legal custody of the State of Florida Department of Children and Families is entitled to a hearing under the Florida Mental Health Act, and the due process and right to privacy guarantees of Florida's Constitution before the state commits the child to a long-term, locked psychiatric institution.

HISTORY AND

STATUS:

The Petitioner, M.W., is a 16 year old child in the custody of the State Department of Children and Family Services. M.W., who was 15 years old at the time, sought release from a locked psychiatric facility on the grounds of South Florida State Hospital, by petition for a writ of habeas corpus filed in the Fourth District of Court of Appeal, which granted the petition on October 27, 1998. On defendants' motion for rehearing, rehearing en banc and certification, the district court withdrew its earlier opinion and denied the child's petition for habeas corpus relief.

M.W. moved for rehearing, rehearing en banc, and certification. The district court denied the child's motion for rehearing and rehearing en banc, but certified as a matter of great importance the following question: "Is a hearing which complies with the requirements of Sections 39.407(4) and 394.467(1), Florida Statutes, necessary when a court orders that a child be placed in a residential facility for mental health treatment, where the child has been committed to the legal custody of the Department of Children and Family Services and the Department is seeking residential treatment?" M.W. filed in the Fourth District a timely notice to invoke discretionary review by the Florida Supreme Court.

As of December 1999, the case was pending before the Florida Supreme Court, certified as a matter of great public importance.

KEY

DOCUMENTS:

Emergency Petition for a Writ of Habeas Corpus (Oct. 15, 1998)

Appendix to Emergency Petition for Habeas Corpus

Petitioner's Motion for Rehearing, Rehearing en Banc and Certification to Florida Supreme Court. (Feb.1, 1999)

Notice to Invoke Discretionary Review of the Florida Supreme Court (Mar. 24, 1999)

**Amicus Briefs:**

ACLU Foundation of Florida

Children First Project

Advocacy Center for Persons with Disabilities

National Association of Counsel for Children

Juvenile Advocacy Project (Legal Aid Society of Palm Beach)

Guardian ad Litem Program (Eleventh Judicial Circuit, Florida)

**MABEL A. et. al. v. WOODARD**

FILE NO.,  
COURT AND  
DATE FILED: 97C1634 (N.D. Ill., filed 1997)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ATTORNEYS FOR  
DEFENDANTS: Mary Nagel  
Assistant Attorney General  
Office of Illinois Attorney General Law Bureau  
100 West Randolph Street  
Chicago, IL 60601  
(312) 814-3276

ISSUES: This is a civil rights case against a DCFS case manager alleging that the case manager took no action in the face of knowledge that foster care children were being abused and neglected. One of the child plaintiffs suffered third degree burns on the soles of his feet.

HISTORY AND  
STATUS: Written discovery is almost complete. Depositions were started in November of 1999.

KEY  
DOCUMENTS: Defendants' Motion to Dismiss

**MACFARLAND v. DUKAKIS**

(also known as LYNCH V. DUKAKIS, and LYNCH v. KING)

FILE NO.,  
COURT AND  
DATE FILED:

78-2152-K (D. Mass. filed Aug. 22, 1978); 82-1884 (1st Cir.)

CITATIONS:

550 F.Supp. 325 (D. Mass. 1982); 719 F.2d 504 (1st Cir. 1983)

CLEARINGHOUSE

REVIEW NO.: 28,786  
24,972

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ISSUES:

This class action case was filed in 1978 to rectify widespread problems in the Massachusetts' foster care system. The problems included unnecessary removal of children from their biological parents due to lack of services, protracted stays in foster care, frequent moves to different placements, injuries resulting from inadequate supervision, and inappropriate delays in returning children from foster care.

HISTORY AND  
STATUS:

The district court granted a preliminary injunction ordering that foster children be provided with case plans and periodic reviews of those plans as required by the AACWA. The court also ordered that social workers not be assigned more cases than they could carry and simultaneously comply with the requirements of case plans and periodic review. The court established an average of 20 cases per worker as a "rebuttable presumption" of compliance with the order on caseload size.

The injunction issued by the federal district court was affirmed by the U.S. Court of Appeals for the First Circuit.

The legal significance of the case stems from the court's recognition that the AACWA creates individual rights which may be enforced by private parties such as foster children and their families. The decision is also important because the court ordered the Massachusetts Department of Social Services (DSS) to implement certain specific remedies which had never been mandated before in a foster care case.

By stipulation of the parties, plaintiffs filed an amended complaint in October, 1989. The amended complaint alleges that the defendants have failed to make reasonable efforts to provide those services, case plans, and case reviews mandated by the AACWA. In addition, it challenges defendants' failure to coordinate services available under other federal and state programs with those available under Title IV-B. Plaintiffs also allege deprivation of their constitutional rights to be free from harm while in the care and custody of defendants; to privacy, liberty and family integrity; and to equal protection.

In January, 1992, the court issued an order requiring the parties to complete discovery by May 1, 1992, and to file memoranda specifying the relief being sought and identifying the disputed issues of fact. The Supreme Court decided Suter v. Artist M. while discovery was underway. The parties agreed to suspend discovery and present arguments to the court regarding the impact of Suter. Plaintiffs argued that the case planning and the case review provisions of the AACWA are still enforceable. The court took the matter under advisement in April, 1992; the parties submitted further briefing in early 1993.

The case was dismissed by the court on May 18, 1993.

#### KEY

#### DOCUMENTS:

Complaint (Aug. 22, 1978)

Intervenors' Complaint (Apr. 1979)

Order (Feb. 27, 1980) (re: class certification)

Motion for Preliminary Injunction (Dec. 18, 1980)

Order (June 9, 1981) (re: motion to dismiss)

Protective Order (Aug. 27, 1981) (re: DSS employees)

Protective Order (Sept. 17, 1981) (re: DSS employees)

Order (Jan. 28, 1982) (re: motion for contempt)

Plaintiffs' Proposed Findings of Fact (June 23, 1982)

Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction (June 24, 1982)

Supplemental Complaint (Oct. 21, 1982)

Appeal Decision No. 82-1884 (Oct. 12, 1983) (affirming preliminary injunction)

Amended Supplemental Complaint (Dec. 5, 1988)

Amended Complaint (Nov. 30, 1989)

Plaintiffs' Proposed Judgment and Memorandum in Support of Plaintiffs' Proposed Judgment (Apr. 24, 1992)

Order of Dismissal (May 18, 1993)

**MAHER v. WHITE**

FILE NO.,  
COURT AND  
DATE FILED: No. 90-4674 (E.D. Pa., filed July 18, 1990)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 46,298

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Harrisburg, PA 17105-2675  
(717) 787-6625

ISSUES: Plaintiffs, natural parents of children in foster care, filed this class action challenging the Pennsylvania Department of Public Welfare's (DPW's) failure to provide written notices advising them of the approval or denial of cash and medical benefits to their children who are in foster care. Plaintiffs assert that they need these notices to know what care is being provided to their children; to assist them in reuniting their families; and to enable them to exercise their right to challenge any delay, limitation, or denial of benefits to their children.

Plaintiffs claim that DPW's no-notice policy violates their rights under the AACWA, Titles IV-a and XIX of the Social Security Act, and the Due Process Clause. Plaintiffs seek declaratory and injunctive relief ordering DPW to issue notices immediately that advise them of (1) each child's placement maintenance benefit amount, the calculation of such amount, and its authorization date; (2) each child's EPSDT (Medicaid) eligibility, including each EPSDT benefit or service

recommended for the child after the child's EPSDT screening; and (3) the parent's right to a fair hearing on any denial, delay, or change of any benefit or service.

**HISTORY AND  
STATUS:**

After granting plaintiffs' motion for class certification, the court granted in part plaintiffs' motion for summary judgment. However, citing Suter v. Artist M. as holding that a violation of a state plan in itself is not a violation of federal law, the court found that it lacked jurisdiction regarding the request for "fair hearing rights" with respect to decisions that negatively affect benefits based on provisions in the state plan.

As to plaintiffs' claims that they are entitled to notice of changes in their children's medical assistance, the court held that the agency violated federal law by not giving appropriate notice to parents when there was a reduction or termination of benefits received by their children in foster care. The court also held that the agency violated federal law by not giving appropriate notice to plaintiffs of EPSDT benefits for which their children in foster care are eligible.

The court denied plaintiffs' motion for reconsideration of its partial denial of their summary judgment motion. On December 1, 1992, the court signed a stipulated judgment order, and on January 29, 1993, the action was dismissed.

**KEY  
DOCUMENTS:**

Memorandum in support of Plaintiffs' Motion for Summary Judgment (July 27, 1991)

Plaintiffs' Brief on Suter v. Artist M. (Apr. 7, 1992)

Plaintiff's Brief in Support of their Motion for Reconsideration (June 17, 1992)

Stipulated Judgment Order (Nov. 20, 1992)

**MARK A. v. WILSON**

FILE NO.,  
COURT AND  
DATE FILED: CIV-S-98-0041 LKK DAD (E.D.CA, filed Jan. 8, 1998)

CITATIONS

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES:

Plaintiffs brought this class action on behalf of all children who are now or will be in foster care in California. This civil rights class action for declaratory and injunctive relief was brought under the Due Process Clause and the federal Adoption Assistance Program (AAP).

The plaintiffs attacked defendant's policy of applying a "means" test to an adoptive family to determine whether a child is eligible for an Adoption Assistance payment. Federal law expressly prohibits the use of an income eligibility test. Plaintiffs alleged that the state imposed unlawful restrictions on the availability of funds that provide support to families who adopt foster children. The suit further alleged that defendants terminate AAP support to families arbitrarily and without their agreement. Federal law states that an Adoption Assistance Agreement is final once it is signed and can only be modified with the concurrence of the family.

HISTORY AND  
STATUS:

The complaint was filed January 8, 1998. The state filed a complaint to join the federal Department of Health and Human Services (DHHS) as a third party defendant on February 20, 1998.

The state and plaintiffs filed cross motions for summary judgment on April 23, 1999. On July 14, 1999, DHHS, as a third party defendant, filed a response to the parties' cross motions for summary judgment agreeing with the plaintiffs that the state of California utilizes a means test prohibited by federal statute.

The state pursued settlement of the claims, and the parties are now involved in settlement negotiations.

KEY DOCUMENTS:

Complaint (Jan. 8, 1998)

Defendants' Third Party Complaint and Summons to join HHS as Defendant (Feb. 20, 1998) (seeking to bind HHS with respect to any orders resulting from the suit).

Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss (March 9, 1998) (arguing that plaintiffs have standing and that the claims are ripe, because the State's policy prevents permanency).

Order (Mar. 25, 1998) (denying defendant's motion to dismiss without prejudice and directing plaintiffs to show cause why expert satisfies GAL standards)

First Amended Complaint (June 25, 1998) (claiming that the state's implementation and administration of the AAP violates both federal law and the rights of the defendants under the Due Process Clause of the 14<sup>th</sup> Amendment).

Memorandum in Support of Plaintiff's Motion for Certification of Class (Oct. 22, 1998) (arguing that class should be certified because of the sheer size of class, the presence of common questions of law or fact, and the typicality of claims).

Memorandum in Support of Plaintiffs' Motion for Summary Adjudication (Apr. 26, 1999) (reasoning that the defendant's policies violate the prohibition on means testing and prohibition on readjusting the payment amounts without concurrence of parent in context of AAP).

Third Party Defendant's Response to the Parties' Cross Motions for Summary Judgment (July 9, 1999) (agreeing with plaintiff's contention that

state is imposing a means test in violation of federal law).

Plaintiffs' Opposition to Defendants/ Third Party Plaintiffs' Motion for Summary Judgment (July 12, 1999) (alleging use of means test by state and that plaintiffs have standing).

**MARISOL A. v. GIULIANI**

FILE NO.,  
COURT AND  
DATE FILED: No. 95-Civ-10533 (S.D.N.Y., filed Dec. 13, 1995)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 50,954

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ATTORNEYS FOR

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ISSUES: This case charges that New York City's failure to care for and protect children in its custody, or those reported to be in danger of abuse and neglect, jeopardizes the health, education, safety, stability, permanency, and developmental well-being of the over 100,000 children affected by the city's child welfare system. The lawsuit seeks to reform all aspects of New York City's child welfare system.

HISTORY AND STATUS:

In June 1996, the federal court upheld virtually all of plaintiffs' legal claims in a sweeping decision. The court extended constitutional protection to children reported for abuse or neglect but not yet in state custody. In addition, the court interpreted children's constitutional right to protection from harm to include harm that results from unnecessary separation from parents, and from extended stays in foster care without a permanent family. On September 26, 1997, the Second Circuit affirmed the district court's certification of the plaintiff class and directed that the district judge divide the classes into subclasses for organizational and management purposes.

A few weeks before the trial was set to begin, in July of 1998, the parties began settlement negotiations. In the settlement negotiations, plaintiffs drew upon expert reports, and lengthy and detailed proposed findings of fact which they had submitted to the court. Over the objections of would-be intervenors representing a subclass of gay, lesbian, bisexual and trans-gender youths in the custody of the city agency, the settlement agreements with the city and the state were approved by the court on January 22, 1999.

In the settlement with the city the parties agreed on an Advisory Panel of some child welfare experts – all of whom have had practical experience administering and reforming child welfare systems. Plaintiffs' attorneys will get regular data from the city, but the expert panel will have access to any information they want. The Annie E. Casey Foundation will provide staff and necessary funding for the Advisory Panel. Panel members are: Douglas W. Nelson, President of the Annie E. Casey Foundation; John B. Mattingly, Senior Program Associate at the Casey Foundation; Judith Goodhand, Consultant with the University of North Carolina Graduate School of Social Work and former Director of the Cuyahoga County Department of Children and Family Services in Cleveland Ohio; Paul Vincent, former Director of Alabama's Division of Family and Children's Services, now Director of the Child Welfare Policy and Practice Group, a non-profit organization in Montgomery, Alabama assisting child welfare systems in ten states.

If the city neither follows the panel's recommendations, nor otherwise implements

necessary reforms, the panel will make findings that the city is not operating in good faith in its efforts to protect children. Such findings will return the case to court, with the panel as witnesses.

At the same time, the state finally agreed to fulfill its responsibility to monitor the city's operations. It will substantially increase the state staff overseeing the New York City agency, and conduct audits of the city's treatment of children in nine specified areas. If those audits, or the states' review of the child fatalities reveal systematic problems, the state is obligated to demand corrective action from the city and to ensure that such action is taken. Plaintiffs can move for the state to be held in contempt of court if it fails to do so.

Thus far, the Advisory Panel is getting from the New York City agency, the Administration for Children's Services, the kind of candor about problems and openness about solutions that was hoped for. Plaintiffs' attorneys are working closely with the Panel, which has hired two full-time staff members. The first of the Panel's assessments of ACS operations is expected in April 2000. Plaintiffs' attorneys have also begun to monitor the settlement with the state, and to examine the fatality reports. If the state fails to provide the necessary information to the panel and take corrective action, plaintiffs will attempt to have the state held in contempt of court.

#### KEY

#### DOCUMENTS:

Decision (in Plaintiffs' favor) Resolving Motions to Dismiss, to Abstain, to Deem Claims Unjustifiable, to Not Exercise Supplemental Jurisdiction, to Bifurcate Proceedings, and to Certify Class (June 18, 1996)

Second Circuit Court of Appeals Decision Affirming the District Court's Decision in Plaintiffs' Favor (Sept. 26, 1997)

**MARTIN A. v. GROSS**

(consolidated for disposition with COSENTINO v. PERALES)

FILE NO.,

COURT AND

DATE FILED: 24388/85 (Supreme Court of the State of New York, filed Oct. 18, 1985)

CITATIONS: 138 Misc.2d 212 (1987); 153 A.D.2d 812, 546 N.Y.S.2d 75 (N.Y. 1989)

CLEARINGHOUSE

REVIEW NO.:

ATTORNEYS FOR

PLAINTIFFS:

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Robert Goodman  
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ATTORNEY FOR

DEFENDANTS:

Will Cook  
Inga Van Eysden  
Jesse Levine  
Assistant Corporation Counsel  
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ISSUES:

This case was filed on behalf of children who had been reported as victims of abuse or neglect to New York City's Child Welfare Administration (CWA), which failed to provide necessary services. CWA is further required under federal and state constitutional and statutory law to respond quickly and appropriately to reports of

child abuse and neglect. It is required to provide protective custody to children in imminent danger of abuse, and provide services to help keep families together when children are not in immediate danger but are at risk for foster care placement.

## HISTORY AND STATUS:

This case was consolidated with Consentino v. Perales because plaintiffs in both suits requested that city and state defendants provide sufficient services to enable families to remain together. State statutes and the constitutional right to family integrity formed the core of both actions.

On April 27, 1987, the court granted relief to the named plaintiffs and issued a preliminary injunction directing the city to develop and implement a plan for delivering preventive services consistent with its constitutional and statutory obligations. The court enjoined the state from imposing a 90-day limit on emergency shelter as a preventive service, finding this limit to be arbitrary and capricious.

The defendants appealed the preliminary injunction. On September 29, 1989, the Appellate Division affirmed the preliminary injunctions, holding that once there is a finding that a child will be placed or continued in foster care unless preventive services are provided, the social services agency is mandated to provide services. The appellate court limited its affirmation to the development of individual case plans for the named plaintiffs, rather than the development of an overall preventive services plan.

Plaintiffs filed four class certification motions between 1986 and 1992. The trial judge rejected all four of these motions without prejudice on the grounds that plaintiffs failed to present enough proof that the circumstances of the named plaintiffs are systemic problems.

In 1994, it became apparent that the process of class certification was going to be extraordinarily protracted, so plaintiffs' counsel proceeded with the damages claims for the individual plaintiffs, and withdrew the injunctive issues (which then became part of Marisol A. v. Giuliani.) The State Supreme Court then decided to separate the cases of each of the families and try them individually. Plaintiffs' counsel continued its involvement with these Martin A. cases.

In 1996, plaintiffs won an award of \$87,500 in the D case. This was a case where two three year old twins were abused after the city placed them in the infirmary of a group home for adolescent boys because it did not have adequate programs for children infected with AIDS.

The G case was brought on behalf of the surviving siblings of Adam Mann, a five-year-old who was beaten to death by his parents in 1990 after the city failed to investigate adequately numerous reports that he and his siblings were being abused.

The case was ready for trial in midsummer 1996, when the city filed an appeal on some of the pre-trial rulings. Three judges on the intermediate appellate Court sided with the city on many of these issues, but two judges of that court issued a strongly worded dissent and the Court of Appeals accepted this case for review. The case then was decided by the Court of Appeals. The Court of Appeals held that the city may be held liable for monetary damages for failure to ensure that reasonable safety and basic necessities are provided for children it has placed in foster care. The Court of Appeals also upheld the plaintiffs' right to assert claims for monetary damages based on the city's negligent failure to provide the plaintiff children with the services and protection mandated by state law. The Court of Appeals granted the plaintiff children leave to plead claims under both the substantive due process and negligence theories, based on new developments in the law.

In coming months, plaintiffs plan to file an amended complaint based on these legal theories and then prepare to take the cases to trial.

#### KEY

#### DOCUMENTS:

Complaint -- Class Action (Oct. 18, 1985)

Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction (Oct. 25, 1985)

Motion for a Preliminary Injunction (Oct. 25, 1985)

Order to Show Cause (Oct. 25, 1985)

Decision and Order (Apr. 27, 1987) (consolidating case with Cosentino v. Perales for disposition; granting plaintiffs' motion for injunctive relief; denying defendants' motions to dismiss and for summary judgment)

Plaintiffs' Memorandum of Law in Support of Renewed Motion for Class Certification (Feb. 14, 1992)

Appellate brief (Aug. 12, 1996)

Decision and Order by Appellate Division, First Department (June 23, 1998)

Decision and Order by the Court of Appeals (Aug. 31, 1999)

**MICHELL REID v. SUTER**

FILE NO.,  
COURT AND  
DATE FILED: No. 89 J 6195 & No. 89 J 6196 (Circuit Ct., Cook City, filed Nov. 21, 1989)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This case challenged the Division of Children and Family Services' (DCFS') treatment of relatives acting or seeking to act as caretakers for foster children. Plaintiffs and intervenors sought to require DCFS to follow a uniform procedure

giving relatives who are denied the opportunity to become foster parents notice of the denial and a right to appeal.

**HISTORY AND  
STATUS:**

The case originally was filed on behalf of an individual plaintiff, a relative seeking to care for a foster child. A motion to intervene was filed on behalf of children adversely affected by DCFS' treatment of relative-care givers, joining in the plaintiff's prayer for relief and also seeking an injunction. Leave to intervene was granted on April 2, 1990, and the intervenors' request for class certification was granted on April 5, 1990.

The court conducted a preliminary injunction hearing between April 5 and April 12, 1990, and entered a preliminary injunction on April 20, 1990. The injunction ordered DCFS to inform relatives about their right to become foster parents and receive board payments, to cease pressuring relatives to become private guardians instead of foster parents, to inform relatives about the right to seek waiver of certain licensing requirements, and to provide notice of decisions concerning foster care.

The parties then engaged in settlement negotiations. In May 1992, the court approved a consent decree providing for: identification of potential relative care givers for foster children, and preference for such placements; provision of complete and accurate information (including a written pamphlet) to current and potential relative care givers; waivers of licensing standards; notice of DCFS decisions concerning relative placement; staff training; and review of children currently placed in non-relative care. The decree provided for monitoring over a four-year period and that has expired.

**KEY  
DOCUMENTS:**

Complaint (Nov. 21, 1989)

Motion to Intervene, and Motion for Class Certification (Feb. 9, 1990)

Order Granting Leave to Intervene (Apr. 2, 1990)

Order Granting Class Certification (Apr. 5, 1990)

Findings of Fact and Conclusions of Law, and Preliminary Injunction (Apr. 20, 1990)

Consent Decree (May 20, 1992)

**NORMAN v. MCDONALD**

(also known as NORMAN v. SUTER, NORMAN v. JOHNSON and FIELDS v. JOHNSON)

FILE NO.,  
COURT AND  
DATE FILED: 89 C 1624 (N.D. Ill., filed Feb. 27, 1989)

CITATIONS: 739 F.Supp. 1182 (N.D.Ill.1990 and 930 F.Supp. 1219 (N.D. Ill.1996)

CLEARINGHOUSE  
REVIEW NO.: 44,465

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**ISSUES:** This is a class action filed on behalf of impoverished parents and legal guardians who have lost, are at risk of losing, or cannot regain custody of their children from the Illinois Department of Children and Family Services because they are homeless or unable to provide food or shelter for their children. Plaintiffs allege that defendants' policies violate provisions of the AACWA as well as the 1st and 14th Amendments.

Plaintiffs sought declaratory and injunctive relief challenging the policies and

practices of taking and retaining children of impoverished parents; failing to assist parents to secure food, cash, shelter and other subsistence through coordination of services; failing to make reasonable efforts at reunification; and abridging the liberty and property interests of parents in retaining custody of their children while requiring them to maintain the means to support themselves and their families.

#### HISTORY AND STATUS:

Two class members secured a lengthy preliminary injunction ruling in their favor in 1990. The injunction required defendants to issue sufficient funds to secure housing and utilities, restore Aid to Families with Dependant Children (AFDC) benefits, and identify all additional sources of financial assistance.

On March 28, 1992, the court approved a consent decree presented by plaintiffs. The decree provides for detailed policies and development of new programs for cash and housing assistance, and for extensive monitoring.

After several deadlines in the decree were exceeded, the parties negotiated the scope of the decree, its implementation, and the mandated compliance reports.

The first five monitoring reports have been issued, and they indicate that the decree has resulted in a higher rate of reunification for families in the plaintiff class. However, compliance levels are disappointing.

On March 10, 1995, an Agreed Order was entered to extend the monitor's term for two additional years, to have DCFS hire a housing specialist to create a system for ensuring that Norman families are reunified speedily, to investigate a new pre-court "screening" to prevent unnecessary removal of children, and to provide for an "ombudsperson" to resolve individual class member problems. The court entered the agreed order and *sua sponte* reduced the agreed period of monitoring by one year. At the expiration of the monitor's term, plaintiffs sought an additional extension from the defendant. Defendant refused this request. Plaintiffs then filed a motion for continued monitoring and/or declaratory and injunctive relief for non-compliance with the consent decree.

Defendants responded by arguing that the Decree was unenforceable after Suter v. Artist M. and that no relief could be granted by the court absent a finding of contempt. Because DCFS "substantially complied" with the Decree's terms, defendants argued, the court could make no finding of contempt and, thus, could not grant relief. Relying on the monitor's report, which contained numerous findings regarding defendants' noncompliance, the district court judge determined that (1) relief could be granted pursuant to the court's inherent authority to enforce an injunction; and (2) the Decree's terms rest upon claims other than the "reasonable efforts" provision at issue in Suter. Accordingly, on April 11, 1996 the court ordered continued monitoring on a more limited scope of issues.

The monitor has completed her final report. A plan for ongoing information exchange (in lieu of monitoring) has been implemented and suggests non-compliance.

**KEY**

**DOCUMENTS:**

Complaint (Feb. 27, 1989) (seeking declaratory and injunctive relief)

Plaintiffs' Memorandum in Support of Motion for a Temporary Restraining Order and/or Preliminary Injunction (Mar. 3, 1989)

Memorandum Opinion (May 30, 1989)

Plaintiffs' Post Trial Memorandum and Proposed Findings of Fact and Conclusions of Law (July 12, 1989)

Plaintiffs' Memorandum of Law In Support of Private Rights of Action (Aug. 15, 1989)

Report and Recommendation (Jan. 16, 1990)

Memorandum Opinion & Order (May 18, 1990)

Consent Decree (Mar. 28, 1991)

Periodic Monitoring Reports (1992-1997)

Agreed Order (Mar. 10, 1995)

Motion for Continued Monitoring and/or Declaratory and/or Injunctive Relief Redressing Substantial Noncompliance with the Consent Decree and the Court Order of March 10, 1995 (Feb. 9, 1996)

Defendant's Response to Motion for Continued Monitoring (Feb. 26, 1996)

Plaintiffs' Reply (Mar. 11, 1996)

Court Order Continuing Monitoring (Apr. 11, 1996)

**OFFICE OF THE CHILD ADVOCATE v. ROSSI**

(also known as OFFICE OF THE CHILD ADVOCATE v. STATE OF RHODE ISLAND and OFFICE OF THE CHILD ADVOCATE v. PICANO)

FILE NO.,  
COURT AND

DATE FILED: C.A. No. 86-0723 P (D.R.I., filed Nov. 25, 1986)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES:

This suit against the Rhode Island Department for Children and Families (DCF) challenged the practice of placing children in night-to-night placement in emergency shelters for extended periods of time and the failure to make "reasonable efforts" to reunify children with their families.

HISTORY AND  
STATUS:

The case was settled with a consent decree in September 1988. An amended consent decree was agreed to in October 1989. Under the decree, DCF agreed not to place children in night-to-night placement absent unusual emergencies, and stipulated that it would provide additional short- and long-term foster placement facilities.

Three hundred fifty placements have been created under the amended consent decree. Eighty two placements were established as an immediate result of the 1989 consent decree. In 1991, upon learning that DCYF was using hotels to shelter youths, in violation of the consent decree, twenty placements were added. When the number of children on night-to-night placement escalated again in 1994, 182 slots were added. In August, 1996, 21 slots were added and then in June 1997, 45 more

placements were created.

Between 1998 and March of 1999, 32 new placements were added to respond to the needs of children with respect to gaps in placement options and numbers.

**KEY**

**DOCUMENTS:**

Complaint (Nov. 25, 1986)

Amended Consent Decree (Oct. 24, 1989)

**OGLALA SIOUX TRIBE et al. v. HARRIS**

FILE NO.,  
COURT AND  
DATE FILED: CV 9400316 (2nd Dist.Ct., Nez Perce City., filed Mar. 7, 1994)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: In this action, Indian tribes and Indian parents and relatives of children in state care sued the state of Idaho for noncompliance with the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 et seq.

The suit alleged that Idaho's child welfare agency denied plaintiffs their rights under ICWA regarding: notice to tribes of cases involving Indian children; exclusive tribal court jurisdiction over Indian children living on reservations and presumptive tribal court jurisdiction over other Indian children; placement preference for Indian foster and adoptive families; record keeping and reporting on placements of Indian children; preventive and reunification services for Indian families; and evidentiary standards for termination of Indian parents' rights. The suit also challenged the state's violation of its duty under the state Administrative Procedures Act to promulgate administrative rules conforming to ICWA. Plaintiffs sought declaratory and injunctive relief to require the state to promulgate and implement administrative rules complying with ICWA.

**HISTORY AND  
STATUS:**

Before filing the action, plaintiffs petitioned for rule-making, under the state Administrative Procedures Act, to compel the agency to develop administrative rules conforming to ICWA. The agency failed to respond to this petition, and in March 1994, plaintiffs filed suit. An additional Indian tribe and individual tribal members intervened as plaintiffs in April 1994.

Plaintiffs commenced discovery in the spring and summer of 1994. The parties entered into negotiations that summer and plaintiffs drafted a proposed set of administrative rules. However, in November 1994, the state rejected the proposed settlement (due to the election of new state officials).

The parties entered into a settlement agreement July 11, 1995 in which the state of Idaho agreed to (1) promulgate rules and regulations incorporating the requirements of ICWA; (2) prepare a pamphlet on ICWA; (3) provide ICWA training to staff; (4) enter into a contract with a third party to monitor state compliance with ICWA; and (5) pay plaintiffs' and intervenors' attorneys' fees.

**KEY  
DOCUMENTS:**

Complaint (Mar. 7, 1994)

Intervenors' Complaint (Apr. 19, 1994)

Settlement Agreement (July 11, 1995)

**PALMER v. CUOMO**

FILE NO.,  
COURT AND  
DATE FILED: 2307/85 (N.Y. Sup. Ct., filed Jan. 18, 1985)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This suit challenged the foster care discharge practices of the New York State Department of Social Services (DSS). The defendants included Governor Mario Cuomo, Mayor Edward Koch, DSS, and the Human Resources Administration. The

plaintiffs claimed that DSS was not meeting its statutory and regulatory obligation to prepare older foster care children for independent living, and to supervise foster care children until they reached the age of 21. The plaintiffs were ten foster children, seven of whom had already been discharged and three of whom were soon to be discharged.

**HISTORY AND  
STATUS:**

The trial court granted plaintiffs' motion for a preliminary injunction on July 17, 1985. (The complaint designated the case as a class action, but at the time of this decision, the plaintiffs had not moved for class certification.) The court ordered the defendants to supervise the plaintiffs until they reached 21 years of age, and, furthermore, not to discharge the three non-discharged plaintiffs until a discharge plan had been adopted and they were given reasonable notice of their impending discharge.

The court agreed with the plaintiffs that the DSS was not complying with New York statutes and regulations that required the DSS to supervise foster care children until the age of 21. Moreover, the court agreed that New York officials were not meeting their legal obligation to adequately prepare discharged foster children for "independent living," which would include training in housing and career issues. The court also held that failure to inform foster children of the anticipated dates of their discharge is inconsistent with the intent of the statute and regulations.

On June 5, 1986, the Appellate Division affirmed the injunction, ordering DSS to promulgate regulations requiring local governments to put in place a system of pre-discharge preparation for independent living, along with a system of post-discharge support. New York promulgated such regulations in 1987.

**KEY**

**DOCUMENTS:**

Decision (July 17, 1985) (granting plaintiffs' motion for preliminary injunctive relief)

**R.C. v. PETELOS**

(also known as R.C. v. NACHMAN, R.C. v. HORNSBY AND R.C. v. CLEVELAND)

FILE NO.,  
COURT AND  
DATE FILED: 88-D-1170-N (M.D. Ala. filed 1988)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 45,438

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## ISSUES:

This case challenges the state's failure to preserve the families of and provide treatment to children with emotional or behavior disorders. Plaintiffs alleged that the state agency: (1) failed to provide plaintiffs and their families with in-home supports and other services needed to preserve family unity; and (2) failed to provide plaintiffs with appropriate care, treatment and services after removal from home. Plaintiffs claimed that the agency violated their constitutional rights to family integrity, proper care while in state custody, and adequate mental health care; their right under the AACWA to "reasonable efforts"; and their right to be free from discrimination on the basis of their disabilities, in violation of § 504 of the Rehabilitation Act, by unnecessarily segregating them in hospitals and other institutions and providing services less effective than those provided to children without disabilities.

## HISTORY AND STATUS:

On April 19, 1989, the district court denied defendants' motion for summary judgment and held that plaintiffs had a private right of action to enforce the AACWA. The court also rejected DHR's assertions of qualified immunity and Eleventh Amendment immunity.

In June 1992, the court approved a consent decree which requires the creation of a "system of care" run according to principles emphasizing placement prevention, family reunification, permanency, and home-based and community-based services. The system will serve three groups of children: (1) children with emotional or behavioral disorders who are in foster care; (2) children with emotional or behavioral disorders who are at imminent risk of foster care placement; and (3) children at imminent risk of foster care placement who are at high risk of developing emotional or behavioral disorders.

The system is required to provide services to these children and their families to protect the children from abuse and neglect, and to enable the children to live with their families, achieve permanency and stability, and become stable, gainfully employed adults. Services must be provided under an "individualized service plan." Children and parents are treated as partners in the planning and delivery of services. Placement disruptions are considered failures of the system, not of the child. The system will advocate for appropriate special education services. Children and their families will receive services in the least restrictive, most normalized environment appropriate to their strengths and needs. The decree is structured to ensure that family preservation services are provided to most children at imminent risk of foster placement.

An implementation agreement, incorporated by reference in the decree, describes how the state will achieve compliance with the decree through initiatives in staff training, service development, quality assurance, and advocacy for class members and their families.

Implementation began in October 1992. Each year, a group of counties representing

15% of the child welfare caseload are targeted for reform. These counties must fully implement the consent decree's requirements by the end of their "conversion" year. The goal was to phase in full statewide compliance by October 1, 1999.

An independent monitor was named to oversee DHR's compliance. During the implementation period, plaintiffs' counsel and their experts will have access to class members, case records and other documents, DHR staff, and placements in which class members live.

By fall 1993, although the first group of conversion counties had not achieved full compliance, they had made substantial progress in changing the caseworkers' view of the agency's mission and of the families they worked with. However, three factors prevented full compliance: ineffective management structure, inadequate service resources, and insufficient staff.

The parties negotiated a new consent order, approved by the court in October 1993, to resolve problems in implementation. It included provisions on the scope of the class; the steps required in "conversion"; criteria and processes for intake, removal, placement, reunification, and case closure; a description of key services; a statement of the rights of children and families, and quality assurance measures. The new order required hiring of senior-level staff, setting of caseload standards, creation of a resource development plan, reinvestment of cost-savings, and improvement of the system of contracting with private providers.

Under the new consent order, the state made progress in hiring better senior-level staff and streamlining the hiring process, creating a better contracting system, and securing more federal funds. The agency also agreed to new policies requiring family and child involvement in planning, delivery, and evaluation of services; creating entitlements to visits and supportive services; promoting mail and phone contact with foster children; and requiring placement close to home and with siblings in most cases. (Additional policies on criteria for agency intervention, and on seclusion, restraint, and behavior-modification practices, are in progress.)

In September 1994, a crisis caused by funding cuts was narrowly averted when the Governor of Alabama agreed to a 20% funding increase; expansion of flexible funding; decentralization of the budgeting process to facilitate county-level reforms; additional staff; implementation of an information and management system; and participation in the Family Preservation & Support program. This agreement was reached on the eve of a hearing on plaintiffs' motion for supplemental relief.

In July 1996, the defendant filed a motion to vacate claiming (1) the decree was the product of collusion, (2) plaintiffs did not have standing because of an agreed change in the decree's class definition, and (3) a change in law, Suter, prevented plaintiffs from obtaining relief. In June 1997, the Court denied the motion to vacate.

Plaintiffs filed a motion for contempt in March 1997, which was resolved with a consent order extending time for compliance and granting other relief in February 1999. In addition, the Court Monitor is still reviewing the defendant's quality of practice.

KEY

DOCUMENTS:

Complaint (Nov. 15, 1988)

Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss (Jan. 24, 1989)

Amendment to Complaint (Mar. 3, 1989)

Memorandum Opinion and Order (denying defendants' motion) (Apr. 19, 1989)

Plaintiffs' Pre-Hearing Memorandum regarding Class Certification (May 16, 1989)

Recommendation of the Magistrate and Order (regarding class certification) (June 16, 1989)

Order regarding Class Certification July 10, 1989)

Plaintiffs' Memorandum in Support of Motion for Access to Class Members (Mar. 20, 1990)

Original Order and Modified Order regarding access to Class Members (Apr. 26, 1990; Aug. 7, 1990)

Order regarding access to DHR employees and staff members (Oct. 5, 1990)

Supplemental recommendation of the Magistrate regarding class certification (May 15, 1990)

Order and Agreement regarding Plaintiff's Access to DHR County Facilities (1990)

Plaintiffs' Report to Mediator (Feb. 21, 1991)

Agreement Regarding Implementation (May 29, 1991)

Order regarding notice to the Class of Consent Decree (June 24, 1991)

Consent Decree (June 5, 1991)

Consent Order Regarding Implementation (Oct. 29, 1993)

Court Monitor's Report (Jan. 31, 1994)

Defendant's Motion to Vacate (July 29, 1996)

Plaintiff's Memo in Opposition to Motion to Vacate (Sept. 16, 1996)

Plaintiff's Motion To Show Cause Why Defendant Should Not be Held in Contempt (Mar. 19, 1997)

Order Denying Motion to Vacate (June 16, 1997)

Consent Order Extending Time for Compliance and Granting Other Relief (Feb. 13, 1999)

**IN RE R.M.**

FILE NO.,  
COURT AND  
DATE FILED: 195-1266 (Ill. App. Ct, filed 1993)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: In this case, a mother wanted to obtain the appropriate services for her emotionally disturbed son after his hospitalization. Essentially, the question was whether the juvenile court has the authority to order the Division of Children and Family Services (DCFS) to provide family preservation services when the child is in the mother's custody.

HISTORY AND  
STATUS: In 1993, the child was hospitalized after suffering a psychotic episode. During the hospitalization, DCFS obtained *ex parte* temporary custody of the child so the mother sought the assistance of counsel. After R.M. was stable and ready for release from the hospital, he remained in the hospital for over six months pending re-hearing of the temporary custody order. Legal Assistance Foundation of Chicago was finally able to obtain the child's return home.

In February 1995, the juvenile court judge declared R.M. a ward, returned him to his mother's custody, and ordered DCFS to continue providing intensive services to maintain the family. DCFS appealed the order, and in October, 1996, the appellate court reversed the trial court's order and remanded the case for a new disposition hearing, holding that the juvenile court has no authority to order DCFS to provide

services to a ward who has been returned to his parent's custody.

After a rehearing was denied, plaintiffs petitioned the Illinois Supreme Court. The Supreme Court denied review.

**KEY**

**DOCUMENTS:**

Complaint

Appeals Court Decision (Oct. 1996)

**RENE M. v. ANDERSON**

FILE NO.,  
COURT AND  
DATE FILED: No. 982014 (Cal. App. Dept. Super. Ct, filed Oct. 23, 1996)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 51,582

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ISSUES: This case sought a writ of mandate ordering the California Department of Social Services (CDSS) to monitor and supervise the operations of the county welfare agencies in accordance with state and federal law. The petitioners are young adults, who until they reached majority, were dependent children in foster care in California. Some of the petitioners have siblings who are still in foster care. California has a state-supervised, county run child welfare system. CDSS is the state agency charged with the administration and supervision of state child welfare services, but services are actually delivered by County Child Welfare Agencies (CWAs). The petitioners alleged that CDSS had failed to perform its duty under state child welfare regulations, to ensure that counties comply with federal requirements, and to supervise and monitor CWAs in the performance of their duties under the foster care program.

## HISTORY

AND STATUS: In May 1997, the parties entered into a stipulation that provides for regular review of counties' compliance with state and federal mandates.

## KEY

DOCUMENTS: Plaintiff's petition (Oct. 23, 1996)

Stipulated settlement (May 5, 1997)

**ROE v. OHIO DEPT. OF HUMAN SERVICES**

(also known as ROE v. STAPLES)

FILE NO.,  
COURT AND  
DATE FILED: C-1-83-1704 (S.D. Ohio, filed Oct. 20, 1983)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 41,621

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ISSUES: This class action concerns whether children in foster care and their parents were receiving pre-removal and prompt reunification services consistent with their rights

under the Adoption Assistance and Child Welfare Act and the Fourteenth Amendment. Plaintiffs alleged that the Hamilton County Department of Human Services (HCDHS) failed to comply with the requirements of the AACWA and that Ohio Department of Human Services (ODHS) failed to properly monitor HCDHS' compliance with the AACWA. Plaintiffs also alleged due process violations.

**HISTORY AND  
STATUS:**

In 1986, the parties entered into a consent decree that required significant improvement in the delivery of services to Ohio's foster children. The District Court's order directed HCDHS to develop a timely written case plan for each child, which must include a discussion of the appropriateness of the placement and the reasonable efforts made by HCDHS to assist the family. The decree also required HCDHS to implement heightened procedural protections for parents with respect to changes in placement or visitation. Furthermore, HCDHS must provide a range of preventive and reunification services to children and families, including: medical assistance; psychiatric or psychological counseling; protective day care services; and homemaker services. Moreover, the agency had to conduct a comprehensive needs assessment and seek funding to address identified service needs.

Plaintiffs entered into a separate consent decree with ODHS, requiring it to issue administrative regulations within 12 months and to implement improved program standards for children's service agencies throughout the state that would extend the benefits of the settlement with Hamilton County statewide.

Enforcement efforts continued against both state and local defendants. A supplementary agreement was signed with the county in 1990 focusing on service delivery. A contempt action was filed against the state in February, 1990 which has resulted in the appointment of an expert panel to oversee the state's compliance.

Neither defendant is in full compliance. The expert panel is still overseeing the state defendants.

In August 1996, the county defendants agreed to an amended order, which modifies the federal consent decree.

As of December 1999, monitoring efforts continue.

**KEY  
DOCUMENTS:**

Complaint -- Class Action (Oct. 20, 1983)

Opinion and Order Granting Motion for Class Certification (July 20, 1984)

Consent Judgment Between Plaintiffs and Defendant Barry (Oct. 2, 1986)

Consent Decree Between Plaintiffs and County Defendants (Oct. 2, 1986)

Supplementary agreement with Hamilton County (Jan. 17, 1990)

Order Appointing Expert Panel (Nov. 6, 1991)

Order Modifying Consent Decree-- state defendant (Aug. 3, 1992)

Agreed Order Modifying Consent Judgment-- county defendants (Aug. 9, 1996)

**SANDERS v. WESTON**

(also known as SANDERS v. LEWIS and SANDERS v. PANEPINTO)

FILE NO.,

COURT AND

DATE FILED: No.2:92-0353 (S.D. W.Va., filed Mar., 1992)

CITATIONS:

CLEARINGHOUSE

REVIEW NO.: 48.638

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ISSUES:

Plaintiffs allege that West Virginia's Department of Health and Human Resources (DHHR) failed to inform Medicaid-eligible foster children and foster parents about the EPSDT program, did not ensure that EPSDT services would be provided consistently, and neglected to provide and arrange for periodic screening of children's physical and mental health, dental health, vision, and hearing.

HISTORY AND

STATUS:

In March 1992, the Appalachian Research and Defense Fund and the National Health Law Program filed suit. DHHR signed a consent decree, agreeing to implement EPSDT regulations and to take interim measures to help plaintiffs access EPSDT services. In the Consent Order entered on August 16, 1993, the class was certified to include all children under 21 years who are in the legal or temporary custody of DHHR and who are eligible for EPSDT services.

The Consent Order granted summary judgment in favor of the plaintiff class. It ordered defendants to comply with EPSDT regulations, to develop a comprehensive remedial plan for complying with EPSDT regulations (federal and state), and to meet and confer with plaintiffs' counsel in an effort to reach agreement on the contents of this plan. Plaintiffs have been monitoring progress and periodically meeting with defendants. Monitoring of implementation of the compliance plan is ongoing.

**KEY**

**DOCUMENTS:**

Complaint (Mar. 1992)

Consent Order (Aug. 16, 1993)

Order and Compliance Plan (Mar. 1, 1995)

**SHEILA A. v. WHITEMAN**

(also known as SHEILA A. v. FINNEY, SHEILA A. v. HADEN and J.D.B. v. BARTON)

FILE NO.,

COURT AND

DATE FILED: No. 89-CV-33 (Dist. Ct. of Shawnee, Kansas, Division 4, filed Sept. 1, 1990)

CITATIONS:

CLEARINGHOUSE

REVIEW NO.:

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**ISSUES:**

Plaintiffs alleged that the Kansas child welfare system violated the AACWA, the federal Child Abuse Prevention and Treatment Act (CAPTA), the Federal Due Process Clause, the Kansas Code for Care of Children, and the Kansas Constitution. The Kansas system had a number of serious deficiencies and had the highest recidivism in the country, with children who had been in foster care and were returned to their parents often returning to the system.

**HISTORY AND  
STATUS:**

In January 1989, a Topeka child guardian filed a class action suit (J.D.B. v. Barton) against the Kansas Department of Social and Rehabilitation Services (SRS) that focused on lack of adequate placements for children entering foster care. The ACLU Children's Rights Project entered the lawsuit in September 1989, by filing a motion to amend, add the governor as a defendant, and add as named plaintiffs children from throughout the state.

Plaintiffs' motion for class certification was granted and SRS's motion to dismiss was denied. The decision established that Kansas children can (1) enforce the AACWA in Kansas state court, (2) seek judicial relief under CAPTA, which requires states to respond to reports of suspected abuse or neglect in a timely and adequate manner, and (3) seek relief for violations of the provisions of the Kansas Code for Children.

In June 1992, defendants filed a motion to dismiss plaintiffs' federal statutory claims, based on Suter v. Artist M. The motion was granted in October 1992. Defendant governor Finney filed a motion to dismiss or for summary judgment on June 15, 1992, which was granted on August 20, 1992. Plaintiffs appealed.

While the appeal was pending, a settlement agreement was reached in June 1993. The settlement agreement mandates wholesale changes in the Kansas child welfare system. Implementation of reforms under the settlement began on January 1, 1994. Pursuant to the agreement, an internal departmental quality assurance unit was established to assess compliance and an independent state auditing agency, the Legislative Division of Post Audit, also was charged with conducting ongoing performance audits assessing the Department's compliance with the agreement.

On April 24, 1997, there was a motion to change the judge. On April 29, 1997, Judge Buchele removed himself from the case. The new judge, Judge Yeoman, has appointed a Special Task Force, previously appointed in April 1997, "to facilitate resolution of foster care issues in Kansas." Plaintiffs have been monitoring compliance with the settlement agreement.

#### KEY

#### DOCUMENTS:

J.D.B. Petition (Jan. 9, 1989)

Sheila A. Amended Petition (Feb. 21, 1990)

Opinion and Order (denying motion to dismiss) (July 27, 1989)

Plaintiffs' Motion for Class Certification (Feb. 21, 1990)

Memorandum Decision (granting class certification) (Sept. 5, 1990)

Memorandum Decision (denying motion to dismiss) (Aug. 23, 1990)

Order (denying motion to dismiss) (Jan. 23, 1991)

Opinion and Order (granting motion to dismiss) (Oct. 20, 1992)

Opinion and Order (denying motion to dismiss) (Oct. 20, 1992)

Order (dismissing defendant Finney) (Aug. 20, 1992)

Plaintiff's Opposition to Summary Judgment (Feb. 1, 1993)

Brief of Plaintiffs/Appellants (Jan. 16, 1993)

Settlement Agreement (May 1993)

Order Regarding Additional Fees (Feb. 28, 1997)

Motion to Change Judge (Apr. 24, 1997)

**T.M. v. CITY OF PHILADELPHIA**

FILE NO.,  
COURT AND

DATE FILED: No. 89-4630 (E.D.Pa., filed May 23, 1989)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES:

In this civil rights action, the plaintiff class claimed that every child in state court dependency proceedings has a statutory and constitutional right to counsel at every stage of the dependency proceeding. Because the class of children was being denied rights secured by state law, plaintiffs argued that the failure to appoint counsel also violated their due process rights under the state and federal constitutions.

HISTORY AND  
STATUS:

Plaintiffs filed a motion for determination of class action in September 1989, to which defendants stipulated. Plaintiffs filed a motion for summary judgment in December 1989. The trial date was continued until May 1990, and defendants were ordered to respond to plaintiffs' motion. The parties then agreed to a consent order,

which the court approved on April 19, 1990.

The parties agreed in the consent order that approximately 4,500 of the 10,000 children in Philadelphia dependency proceedings were not represented by counsel. Under the order, all children would be represented by counsel. The consent order was to expire April 18, 1996 -- allowing plaintiffs' counsel time to ensure that the process of appointing counsel for children had been institutionalized.

In July 1994, plaintiffs agreed to extend the deadline for full compliance with the consent order to December 31, 1995. Defendants submitted a new proposed implementation order to the court for approval, including the new deadline and exceptions to the consent order's mandates in certain circumstances. Plaintiffs objected to the latter provisions.

As of January 1998, the defendants achieved 100% compliance with the consent decree by appointing counsel for all children adjudicated dependent.

#### KEY

#### DOCUMENTS:

Complaint (May 23, 1989)

Plaintiffs' Motion for Determination of Class Action (Sept. 22, 1989)

Plaintiffs' Motion for Summary Judgment (Dec. 26, 1989)

Consent Order (Apr. 18, 1990)

**TIMMY S. v. STUMBO**

FILE NO.,  
COURT AND  
DATE FILED: 80-24 (E.D.Ky., filed 1980)

CITATIONS: 537 F.Supp. 39 (E.D. Ky. 1981); 916 F.2d 312 (6th Cir. 1990)

CLEARINGHOUSE  
REVIEW NO.:

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ISSUES: This case was filed in 1980 on behalf of a seven year old child with multiple disabilities, his natural mother, and his foster parents. The case alleged that the state failed to provide the child, Timmy S., with appropriate services, including an adequate foster home. The natural mother found an appropriate foster home for Timmy, but the state refused to place Timmy there. The parties then sought an administrative hearing so that they could correct errors made by the state and get the services Timmy needed. The state refused to provide a hearing and retaliated against them by closing the foster home.

Plaintiffs filed suit, claiming that the Kentucky system of administrative hearings was grossly inadequate.

HISTORY AND  
STATUS:

As the case progressed, Kentucky changed its system of administrative hearings dramatically. By 1989, the only remaining dispute concerned the right of foster parents to fair hearings. The state argued that foster parents had no such rights.

The district court ruled that foster parents did have a right to hearings under the AACWA. Kentucky appealed. In 1990, the United States Court of Appeals upheld the ruling of the district court and ordered that foster parents be given hearings upon request.

In 1992, defendants moved to vacate the order. They argued that the Supreme Court's decision in Suter v. Artist M. removed the legal basis for the court's order. The federal law on which the court had relied, Kentucky argued, was no longer enforceable and once again foster parents had no right to hearings. Plaintiffs opposed that motion, arguing that the state read Suter too broadly and that the constitution provides an independent basis for the right to a hearing.

On October 8, 1992, defendants' motion to alter or amend judgment was denied as untimely. Defendants filed an appeal on November 9, 1992. By order dated November 29, 1993, the Sixth Circuit affirmed the district court's denial of the motion.

**KEY**

**DOCUMENTS:**

Memorandum and Order (Sept. 7, 1989)

Unpublished Opinion of the Sixth Circuit (July 25, 1990)

Unpublished Opinion of the Sixth Circuit (Nov. 29, 1993)

**TIMOTHY J. v. CHAFFEE**

FILE NO.,  
COURT AND

DATE FILED: 001128 (Cal. Super. Ct., Los Angeles Cty., filed Aug. 26, 1988)

CITATIONS:

CLEARINGHOUSE

REVIEW NO.: 43,690

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**ISSUES:** This class action was filed on behalf of children in the Los Angeles County child welfare system who are denied the regular supervision to which they are entitled under state law. Plaintiffs alleged that county social workers do not have regular face-to-face contact with children, parents, and foster parents as required by state regulations. Plaintiffs also alleged that the county failed to develop a child welfare services plan as state law required.

**HISTORY AND STATUS:**

In August 1988, plaintiffs filed a complaint seeking declaratory and injunctive relief and petitioned for a writ of mandate to enforce the children's rights to regular face-to-face visitation.

In November 1988, the court ordered the plaintiffs to join the state's Department of Social Services (DSS) as a defendant.

In April 1989, the state filed a cross-complaint against the county, seeking declaratory relief that the county has a duty to provide minimum contact and to comply with the visitation requirement and has failed to do so; injunctive relief to compel the county to comply with the minimum contacts and visitation requirements contained in DSS regulations and directives; and a writ of mandate commanding the county to meet the minimum contacts requirements.

In May 1989, a taxpayer's motion to intervene, alleging the Department of Children's Services' (DCS') failure to comply with applicable state law and regulations, was granted. Intervenors claimed that the alleged noncompliance was an illegal expenditure and waste of funds by the county and the state.

In June, 1989, Los Angeles County filed a cross-complaint against the state. The county asked for an interpretation and declaration of its rights and duties with respect to certain DSS Regulations. The county also asked for an alternative or peremptory writ of mandate and/or prohibition which would prohibit enforcement of DSS regulations for child visitation and prohibit requiring strict compliance with the DSS regulations for every child provided services under the four Children's Welfare Services Programs. The county also asked, if the court were to rule that the DSS regulations are mandatory, for an order prohibiting the state from proceeding

against the county until the state complied with review and notice requirements, and from enforcing the DSS regulations without providing funding for this new level of service.

As a result of several status conferences, in April, 1990, the court appointed a referee to resolve issues of fact and develop a compliance plan.

In October 1993, after extensive negotiations, the parties entered into a settlement agreement in which DCS agreed to comply with relevant state child welfare regulations. At the time of the agreement DCS had come into compliance with the regulations. The agreement included monitoring provisions to ensure that compliance continued. The parties voluntarily dismissed the case on October 12, 1993. The compliance reports show substantial improvement in compliance with the regulations.

#### KEY

#### DOCUMENTS:

Complaint for Declaratory and Injunctive Relief, Petition for Writ of Mandate (Aug. 9, 1988)

Memorandum of Points and Authorities in Opposition to Demurrer (Nov. 9, 1988)

Notice of Ruling re: Demurrer (Nov. 17, 1988)

First Amended Class Action Complaint for Declaratory and Injunctive Relief, Petition for Writ of Mandate (Nov. 30, 1988)

State Defendant's Cross-Complaint for Declaratory and Injunctive Relief (Apr. 25, 1989)

Complaint in Intervention (May 3, 1989)

Memorandum of Points and Authorities re: Motion to Intervene (May 3, 1989)

Notice of and Motion to Intervene (May 3, 1989)

County's Cross-Complaint (June 30, 1989)

Settlement Agreement (Oct. 12, 1993)

Order of Dismissal (Oct.12, 1993)

#### WARD v. KEARNEY

FILE NO.,  
COURT AND  
DATE FILED:

98-7137-CIV-MORENO  
(U.S. District Court, S.D.Fla., Fort Lauderdale Division, filed Oct. 20, 1998)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO:

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**ISSUES:** Plaintiffs, children in state custody, allege in this class action that defendants have subjected them to serious physical, sexual, and emotional abuse and neglect by deliberately confining them in overcrowded foster and shelter care facilities; failing to screen or evaluate them to ensure that they are safely and appropriately placed with other children who will not pose a threat to them; and failing to monitor placements. In additions, plaintiffs allege that caseworker caseloads are excessively high and caseworker turnover precludes the provision of appropriate and required case management services.

**HISTORY AND STATUS:**

The complaint was filed on October 20, 1998, on behalf of all children who are now or will be involuntarily removed from the homes of their parents or legal guardians for their own safety and protection and placed in the custody of the Florida Department of Children and Family Services.

At a status hearing on January 11, 1999, the newly elected governor, Jeb Bush, and Kathleen Kearney, the named defendant, both asked the court for a six-month continuance so that they could implement changes to improve child protective services in Broward County. Discovery was stayed and the decision on class certification was postponed until the next hearing on March 11, 1999.

The judge issued an order temporarily staying litigation on March 11, 1999. Class certification was granted on March 16, 1999, and discovery resumed on July 15, 1999.

Settlement negotiations began in August 1999.

**KEY**

**DOCUMENTS:** Complaint - Class Action (Oct. 20, 1998)

Plaintiffs' Motion for Class Certification (Dec. 2, 1998)

Plaintiffs' Memorandum of Law in Support of Motion for Class Certification (Dec. 2, 1998)

Emergency Motion for Preliminary Injunction and Plaintiffs' Memorandum of Law (Dec. 16, 1998)



**WARD v. NEAL**

(also known as WARD V. KELLER)

FILE NO.,

COURT AND

DATE FILED: C2-87-1448 (S.D. Ohio, filed Dec., 1987)

No. 94-1448 (6th Cir., appeal filed Mar., 1994)

CITATIONS: 774 F.Supp. 439 (S.D. Ohio 1991)

CLEARINGHOUSE

REVIEW NO.: 49,302

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**ISSUES:**

The complaint addressed deficiencies in child welfare services, including: pre-placement services; reasonable efforts to prevent placement; least restrictive placement; lack of fair hearing procedures for parents and other concerned persons to contest the provision, reduction, termination, or adequacy of child welfare services; and inadequate monitoring and supervision of service provision by the state department of human services.

The complaint also addressed due process and right to counsel issues in the juvenile court system.

**HISTORY AND STATUS:**

On the fair hearing issues involving the state defendants, the state was granted summary judgment in 1991. In 1992, the state moved for summary judgment on the supervision and administration claims, on the basis of the Suter v. Artist M. decision.

In early 1993, the district court found that Suter did not make a radical change in the law, but the federal law claims failed even under the Wright/Wilder test. The district court also rejected plaintiffs' constitutional claims. The fair hearing, constitutional, and federal law claims were appealed to the Sixth Circuit. The appeal was voluntarily dismissed in the face of Sixth Circuit precedent on a standing issue.

As to the juvenile court, the class-wide claims have been settled, with declaratory and injunctive relief creating new procedures to protect parents' and other concerned parties' rights.

As to the county defendants, the class-wide claims were resolved in a settlement providing an independent review of the local agency. The final report from this review was favorable and resulted in significant improvements in local practice.

The prosecutor defendants did not participate in the settlement with the county

defendants, but instead moved for summary judgment. The district court determined that the settlements obtained with the juvenile court and the county were sufficiently far-reaching to protect class members from future injury, so the court declined to order any additional equitable relief.

Nevertheless, in January 1994, the district court concluded that the prosecutors were bound by the terms of the consent injunction entered pursuant to the settlement with the county, under Fed. R. Civ. Pro. 65.

Now pending before the court is a motion to show cause against the prosecutors for their failure to make good faith efforts to implement the recommendations of the expert evaluation of county children's services activities, conducted pursuant to the terms of the consent injunction with the county. Most likely, the court will not rule on these issues and has not ruled as of August 1999.

The individual damages claims were settled in early 1994 when the county agreed to pay the Ward family \$45,000 to settle their damage claims.

#### KEY

#### DOCUMENTS:

Complaint for Declaratory, Injunctive and Compensatory Relief--Class Action (Dec. 1, 1987)

First Amended Complaint for Declaratory, Injunctive and Compensatory Relief--Class Action (June 3, 1988)

Plaintiffs' Motion for Class Certification (Mar. 31, 1989)

Opinion and Order denying motions to dismiss (Dec. 4, 1989)

Plaintiffs' Motion for Partial Summary Judgment Against State of Ohio (Oct. 15, 1990)

Motion to Enforce Settlement Agreement Between Plaintiffs and Jackson County Juvenile Court (Feb. 27, 1991)

Opinion and Order re: Summary Judgment on State Hearing Issue (Sept. 5, 1991)

Plaintiffs' Answer to State Defendants' Motion for Summary Judgment (Oct. 15, 1991)

Joint Motion in Support of Entry of Final Judgment (Feb. 28, 1992)

Judgment Entry Journalizing Agreement with Stephen Michaels on Class-Wide Claims for Declaratory and Injunctive Relief (June 19, 1992)

Opinion and Order (June 19, 1992)

Plaintiffs' Answer Memorandum to State's motion for Summary Judgment/Motion for Judgment on the Pleadings (June 30, 1992)

Judgment Entry Journalizing Agreement with Jackson County Defendants on Class-Wide Claims for Declaratory and Injunctive Relief (July 24, 1992)

Joint Motion in Support of Final Judgment (between plaintiffs and county defendants) (Oct. 30, 1992)

Opinion and Order (Feb. 23, 1993)

Plaintiffs-Appellants' Brief on the Merits (June 21, 1994)

Plaintiffs-Appellants' Reply Brief (Aug. 11, 1994)

**WASHINGTON STATE COALITION FOR THE HOMELESS v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

FILE NO.,  
COURT AND  
DATE FILED: 91-2-15889-4 (King Cty. Supr. Ct., filed July 23, 1991)

CITATIONS: 133 Wn.2d 894 (1997)

CLEARINGHOUSE  
REVIEW NO.: 47,062

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ISSUES: The complaint, filed by homeless families with children and the Washington State Coalition for the Homeless, asserts constitutional claims and claims under state and federal child welfare statutes. The action concerns the state's failure to assist homeless families with children, including those who need housing assistance to prevent, or shorten, foster care placement.

## HISTORY AND STATUS:

On August 21, 1992, the court granted in part and denied in part defendants' motion to dismiss. The court dismissed the AACWA claims, but it ruled that plaintiffs had stated claims under state child welfare statutes and the state and federal constitutions.

On December 15, 1992, the court certified a class of all present and future families with homeless children, and all families who needed or would need housing assistance to prevent or shorten their children's foster placement. (At the request of the defendants, the court excluded homeless unaccompanied youth from the class.)

On February 16, 1994, the court ruled on cross motions for summary judgment. The court held that the state superior court, in individual dependency cases, had the power to order the state agency to provide housing assistance, when a family's homelessness is the primary factor in causing or prolonging foster placement.

The court also held in its February 16, 1994 order that state law required the agency to devise and implement a comprehensive plan to assist homeless families, and the plan must be adequate to address the needs of homeless families. The court reserved for trial the issues of whether the agency had such a plan and, if so, whether the plan was adequate.

The trial was completed on May 31, 1994. On July 28, 1994, the court issued a verdict finding that the agency had a plan, but the plan was inadequate to address the needs of homeless children. Furthermore, in developing the plan, the agency failed to collect and analyze data; consult with experts, other public agencies, and community organizations; and to coordinate its efforts with other state agencies. In September 1994, the court denied defendants' motion to set aside the verdict. In January 1995, the court issued a proposed final order for the parties' comments, which would give defendants six months to submit an adequate plan for services to homeless children for the court's review.

The Department of Social and Health Services (DSHS) then appealed the matter and the Washington Supreme Court accepted direct review. Oral argument was heard on October 8, 1996.

On December 24, 1997, the Washington Supreme Court issued its ruling in this case. The court determined that Washington State statutes required DSHS, the state's human services agency, to devise and implement a "coordinated and comprehensive plan" to assist the state's growing numbers of homeless families with children. The court also ruled that judges in dependency cases have the authority to order DSHS to provide housing assistance to a family whose homelessness is the primary factor in causing or prolonging a child's foster care placement.

The Washington State Supreme Court affirmed the trial court on all counts. Among

the most significant aspects of its ruling, the court affirmed the trial court's requirement that DSHS "perform its duty according to professionally accepted procedures and standards." The court also adopted the findings of the experts that an adequate plan will have at least the following elements: prevention assistance; emergency shelter; transitional assistance to get children out of the shelters into stable housing; a process for ongoing monitoring and evaluation.

The court also ruled that DSHS's planning process must include coordination within DSHS's separate divisions, and with other state agencies, consultation with experts, and data collection and analysis.

The 1999 Washington State legislature responded to the court's ruling with new legislation and substantial increases in funding. The new law requires the state's plan to be developed with necessary expertise, and the consultation of community organizations; conform with professional standards; provide prevention services; provide emergency shelter; provide transitional housing assistance; and provide for ongoing monitoring and evaluation.

The new law also required the state's public assistance agency to address the needs of homeless families in the design and administration of programs; arrange for the use of its local offices in the identification, assistance, and referral of homeless families; and link its services with the shelter and housing provided by other agencies.

The new law codifies the authority of superior court judges to order DSHS to provide housing assistance in cases where the family's homelessness is the primary factor in causing or prolonging a child's foster care placement. It also includes assistance to homeless, unaccompanied children, which the court had excluded from the litigation, and funds an improvement in the state's on-going collection of data about the homeless population.

In light of these developments, the plaintiffs have agreed to join the defendants in seeking the dismissal of the litigation.

#### KEY

#### DOCUMENTS:

Complaint (served Mar. 29, 1991; filed July 23, 1991)

Order on Motion to Dismiss (Aug. 21, 1992)

Order Granting Class Certification (Dec. 15, 1992)

Order on Summary Judgment Motions (Feb. 16, 1994)

Motion to Reinstate Title IV-B and Title IV-E Claims (Nov. 4, 1994)

**WILDER v. BERNSTEIN**

(also known as WILDER v. SUGARMAN)

FILE NO.,  
COURT AND  
DATE FILED:

78 Civ. 957 (RJW) (S.D.N.Y., filed June 14, 1973)

CITATIONS:

Wilder v. Sugarman, 385 F.Supp. 1013 (S.D.N.Y. 1974) (three-judge court); Wilder v. Bernstein, 499 F.Supp. 980 (S.D.N.Y. 1980); Wilder v. Bernstein, 645 F.Supp. 1292 (S.D.N.Y. 1986), aff'd, 848 F.2d 1338 (2d Cir. 1988); 725 F.Supp. 1324 (S.D. N.Y. 1989) (intervenors entitled to attorney fees)

CLEARINGHOUSE  
REVIEW NO.:

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(212) 355-1444

ISSUES:

This class action on behalf of black protestant children in need of foster care in New York City commenced in 1973. It alleged that foster care services were being provided by religiously affiliated child care agencies with public funds in violation of the Establishment and Free Exercise Clauses of the 1st Amendment, and that policies of racial and religious matching of foster children with such agencies denied equal access to services in violation of the Equal Protection Clause.

## HISTORY AND STATUS:

The suit was settled in 1986 after plaintiffs, the city defendants, and an intervening group of non-sectarian agencies agreed on a stipulation that mandated widespread reform of New York City's foster care system to improve the quality of services available to all children. In addition to eliminating discrimination and protecting free exercise rights, the stipulation required professional evaluations of children when they come into care; rational placement of children on a first come, first served basis; a system for ranking the comparative quality of agencies; and "meaningful access" for foster children to family planning and abortion. The settlement, negotiated in open court over a period of several months, was approved by the district court on April 28, 1987. It was upheld by the Second Circuit on June 8, 1988, over the objections of the sectarian agencies.

Plaintiffs' efforts to enforce the stipulation resulted in court-ordered implementation dates and the appointment of a settlement panel. Nevertheless, the city defendants failed to provide adequate evaluations of children coming into care or "meaningful access" to family planning and abortion services.

Plaintiffs filed a contempt motion on July 14, 1993, citing four provisions in the consent decree with which defendants had failed to comply: evaluations, planned placements, foster children placed with relatives, and information gathering.

The evaluation part of the contempt motion was resolved by a pilot project which began in October 1994.

Regarding foster children placed with relatives, on February 23, 1994, the court found that the decree applied to kinship foster children, but the court did not find defendants in contempt. The defendants appealed this ruling to the Second Circuit. The appeals court affirmed, directing the city to include the approximately 21,000 children living in kinship placements within the "Wilder" protections. As a result, these children now receive services under the supervision of private agencies instead of being relegated to the public agency.

When the city planned to implement a "managed care" system at the beginning of 1996, which was poorly planned, would have had the effect of cutting payments for foster care services, and was likely to result in poorer services, plaintiffs use of the Wilder case to obtain a federal court order blocking the plan unless and until the city could demonstrate that it would not be harmful to children.

In 1996, attorneys for plaintiffs and for the city began an attempt to work through noncompliance issues in a non-adversarial setting.

In 1998, the Wilder v. Bernstein consent decree obligations were incorporated into a court-ordered settlement agreement reached by the same plaintiffs and the same city defendants in the case Marisol A. v. Giuliani. The Wilder obligations are now

being monitored by an advisory panel of child welfare experts who issue recommendations and monitor progress, as part of the overall Marisol A. settlement regarding New York City's child welfare system.

KEY

DOCUMENTS:

Fourth Amended Complaint (Wilder v. Bernstein) (Apr. 27, 1983)

Final Settlement (Dec. 1985)

Plaintiffs' Brief on Appeal (June 9, 1987)

Plaintiffs' Motion for Contempt & Enforcement (family planning issues) (Dec. 28, 1989)

Plaintiffs' Contempt Motion re: evaluation, vacancy control, first come--first served, and best available program (Mar. 6, 1990)

Contempt Motion (July 14, 1993)

Order re: children in kinship care (Feb. 23, 1994)

Plaintiffs' Brief on Appeal re: Children in Kinship Care (Aug. 15, 1994)

Intervenor Agencies' Brief on Appeal (Aug. 15, 1994)

Plaintiff-intervenors' Brief on Appeal (July 13, 1994)

Second Circuit Opinion (Feb. 23, 1995)

Judge Ward's Kinship Orders (Dec. 28, 1995)

Judge Ward's Order re: TRO stopping Defendants' managed care system (Jan. 10, 1996)

Order to Implement Advanced CES model (Sept. 13, 1996)

**WILLINGHAM v. MCDONALD**

FILE NO.,  
COURT AND  
DATE FILED: No. 96-00-00120 (Circuit Court of Cook County, filed June 6, 1996)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEY FOR  
PLAINTIFFS: Bruce A. Boyer  
Children and Family Justice Center  
Northwestern Legal Clinic  
357 E. Chicago Ave.  
Chicago, IL 60611  
(312) 503-8576

ATTORNEY FOR  
DEFENDANTS: Barbara Greenspan  
Assistant Attorney General  
100 West Randolph, 7th Floor  
Chicago, IL 60601  
(312) 814-7087

ISSUES: This suit challenges the Department of Children and Family Services' (DCFS) use of disability benefits collected on behalf of children with disabilities in foster care, claiming that DCFS fails to take proper steps to ensure that SSI payments are used for the benefit of the recipients. The suit charges that DCFS regularly breaches its fiduciary responsibility to foster children with disabilities.

HISTORY  
AND STATUS: The suit was filed in June, 1996. A class has been certified. As of June, 1997, the parties were in discovery. On July 23, 1999 the plaintiff filed a motion for summary judgment.

KEY  
DOCUMENTS: Complaint (June 6, 1996)  
  
Plaintiff's Motion for Summary Judgment (July 23, 1999)

**YOUAKIM v. MCDONALD**

FILE NO.,  
COURT AND  
DATE FILED: 95-275 (7th Cir)

CITATIONS: 71 F.3d 1274 (C.A.7 1995)

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
PLAINTIFFS:

Robert Lehrer  
Diane Redleaf  
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205 W. Monroe  
Chicago, IL 60606  
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John Bowman  
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205 W. Monroe  
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ATTORNEYS FOR  
DEFENDANTS:

Tina Tchen  
Skadden, Arps  
333 W. Wacker, 21st Floor  
Chicago, IL 60601  
(312) 407-0700

ISSUES: This case concerned violations of the original Miller v. Youakim, (440 U.S. 125 (1979)), decree and due process violations as a result of eliminating full benefits for children in relatives' homes.

Plaintiffs, a class of foster parents and children who stood to lose their benefits because their homes were not state licensed, challenged the Illinois Department of Children and Family Services' (DCFS') newly instituted licensing requirements for foster homes, alleging they violated the prior Youakim judgment, the Social Security Act, and the Due Process Clause. Prior to June 1, 1995, relatives were not required to be licensed. Thus, the effect of the new statute was to terminate the foster care benefits of children in relative homes while the homes were attempting to become licensed.

**HISTORY AND  
STATUS:**

The district court enjoined the director of DCFS from terminating benefits, and the director appealed. On December 6, 1995, the Seventh Circuit held that due process requires that the governmental agency provide current recipients the opportunity to establish eligibility under the new standards before their benefits can be eliminated. Defendant's motions for a rehearing en banc and *certiorari* were denied. Final judgment was entered requiring defendants to make compensatory payments to all class members.

As of October 1999, plaintiffs are in the process of investigating new compliance issues.

**KEY  
DOCUMENTS:**

Complaint (May 1995)

Court of Appeals Decision (Dec. 6, 1995)

DAMAGES CASES

**BOGUTZ v. STATE OF ARIZONA**

FILE NO.,  
COURT AND  
DATE FILED: No. CV94-04159 (Az.Supr.Ct., Maricopa City., filed Oct. 1993)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.: 42,317

ATTORNEYS FOR  
PLAINTIFFS: Laurence M. Berlin  
4205 E. Skyline  
Tucson, AZ 85718  
(520) 615-0035

Elliot Glicksman  
Stompoly, Stroud, Giddings & Glicksman  
1820 Northwest Tower  
One South Church Avenue  
Tucson, AZ 85701  
(520) 628-8300

ATTORNEYS FOR  
DEFENDANTS: Michael F. Carroll  
Burch & Cracchiolo  
702 E. Osborn Road, Suite 200  
Phoenix, AZ 85014  
(602) 234-9946

ISSUES: This action was brought on behalf of a class of all present and future foster children, and a subclass including all children who entered state custody after January 1, 1986 and who suffered sexual abuse in foster homes. The case seeks injunctive relief on behalf of the class, and damages for the subclass.

The case was brought to remedy the high instance of neglect, abuse, and sexual molestation of children in foster care, and the state's failure to properly investigate abuse/neglect reports; provide preventive and reunification services; provide adequate placements, health care, and mental health care for foster children; provide for sibling placement and visitation and parent-child visitation; provide case planning and case review, and achieve permanency for children. The complaint includes

constitutional substantive and procedural due process claims, state statutory claims, and state tort claims.

#### HISTORY AND STATUS:

The action was originally filed in October 1993, not as a class action, but as a consolidated action on behalf of 36 families. After nine months of litigation, mostly concerning disputes over production of records pertaining to these families, the state filed a motion to dismiss in December 1993.

In June 1994, in response to the defendants' motion to dismiss, the court ordered that an amended complaint be filed, with more detail on the factual basis for plaintiffs' claims. In July 1994, plaintiffs filed an amended complaint, dropping all claims on behalf of parents, and adding the class-action allegations. The state then sought a venue change to Maricopa county. The court held two evidentiary hearings on the venue issue, concluding in January 1995. Venue was returned to Pima County.

In 1996 the court appointed University of Arizona Law School Professor Winton Woods as Special Master, charged with determining whether the state's own record keeping system could be used to identify the children who were abused during the time period in question. The Special Master determined that the state's Central Registry System would only identify eighty percent of the abused children, a figure that would come out to around 210 children. The court concurrently ordered discovery of the case review that was performed by the state on December 13, 1993, which identified another 92 children who may have been abused. Due to some overlap between the two figures, the number of children thought to have been abused remains 210 children, 100 of which have already been named for the court. However, the state has failed to produce the files of these children to the plaintiffs. Plaintiffs are urging that the files be produced so that the guardian ad litem appointed to represent all the children will be able to adequately protect their rights and interests.

Class certification for injunctive relief for Class A was denied in 1997, but the court has indicated that it may reconsider this issue. Certification for Class B on the issues of duty and standard of care is under submission. Plaintiffs feel that an important feature of this case is that it combines the effort at reforming certain fundamental aspects of foster care with an effort to compel the state to identify and compensate the foster children that have been abused while in state custody. Plaintiffs are also concerned by the state's inherent conflict of interest in opposing the claims of the foster children it is charged with protecting, and instead representing the state employees.

Trials for two of the children in the representative class are set for spring 2000 (see entries for Sergio A. and Rachel W.).

#### KEY

DOCUMENTS: Amended Complaint (July 26, 1994)

**FORD v. JOHNSON**

FILE NO.,  
COURT AND  
DATE FILED: No. 94-2201 (W.D. Penn., filed November 23, 1994)

CITATIONS: 899 F. Supp 227 (1995), 116 F.3d 467 (3rd Cir. 1997) *Aff'd*

CLEARINGHOUSE  
REVIEW NO.:

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DEFENDANTS: Attorneys for Children and Youth Services:

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Pittsburgh, PA 15222

#### ISSUES:

Plaintiff, the mother of a child who was beaten to death by her father after being returned to his custody by the state agency, alleges that individual county employees, the city police department and individual police officers committed civil rights and state law violations against her in their treatment of her daughter. Plaintiff claims that the state's action violated her 8<sup>th</sup> Amendment rights and her substantive due process rights under both the state-created danger and special relationship exceptions to the general rule of no liability.

#### HISTORY AND STATUS:

The complaint was filed in 1994 and was subsequently removed to federal court. The Children and Youth Services defendants filed a motion to dismiss and the police defendants filed a motion for summary judgment. The Motion for Summary Judgment was denied. The court went on to hold that the plaintiff had not stated a claim for relief under the 8<sup>th</sup> Amendment, or under the special relationship exception to *DeShaney*. The state law claims against several of the defendants, except those that alleged willful misconduct, were dismissed. However, the court also held that

the under the present facts the state-created danger theory presents a viable basis for recovery for claims of violations of due process rights and that the case could proceed based on those allegations.

In 1997, the Third Circuit Court of Appeals affirmed the lower courts ruling on the motion to dismiss and the motion for summary judgment.

**KEY**

**DOCUMENTS:**

Defendants' Motion to Dismiss

Defendants' Motion for Summary Judgment

**FREDRICKA H. v. PSI SERVICES CORPORATION**

FILE NO.,  
COURT AND  
DATE FILED: 95L6397 State Court Law Division (Circuit Court of Cook County, filed 1995)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
PLAINTIFFS: Patrick T. Murphy  
Peter Schmiedel  
Charles Golbert  
Office of the Cook County Public Guardian  
2245 West Ogden Avenue  
4th Floor, Juvenile Court  
Chicago, IL 60612  
(312) 433-4300

ATTORNEYS FOR  
DEFENDANTS: Joseph Eichberger  
Jerome G. McSherri & Associates  
500 West Madison Street, Suite 2790  
Chicago, IL 60661  
(312) 930-5500

ISSUES: This lawsuit was brought on behalf of a child who was repeatedly raped by her foster father, a convicted rapist and drug offender. The suit alleges that the private agency contracted for this particular case failed to insure proper criminal background clearances and similarly failed to monitor the child in a manner consistent with social work practice standards.

HISTORY AND  
STATUS: The first motion to dismiss was denied. Two supplemental motions to dismiss were similarly denied. The case was settled for a monetary sum.

**JEREMY C. v. STATE OF ARIZONA**

FILE NO.,  
COURT AND  
DATE FILED: No. C304365, filed in 1994

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
PLAINTIFFS: Laurence M. Berlin  
4205 E. Skyline  
Tucson, AZ 85718  
(520) 615-0034

ATTORNEYS FOR  
DEFENDANTS: Catherine Stewart  
Assistant Attorney General  
177 North Church, #1105  
Tucson, AZ 85701  
(520) 388-7130

ISSUES: This case involved the claims of plaintiff Jeremy that he was the victim of homosexual contacts while he was a foster child under the care and custody of Arizona. These contacts included multiple incidents of forced anal and oral intercourse with another adolescent foster child, Jose A. Jeremy sued the state and its social workers alleging inadequate case management for the boys and inadequate supervision for the foster home; he sued Jose for rape; and he sued the state licensed foster parents of the home in which the rape took place. Jeremy claimed emotional and psychological harm resulting from his foster care experiences.

Theories of liability included violation of civil rights (42 USC §1983) and negligence. The state indemnifies all defendants, per statute.

HISTORY AND  
STATUS: The case was settled in May of 1998 for \$150,000 in personal damages.

KEY  
DOCUMENTS: Complaint (1994)  
  
Defendants' Motion for Summary Judgment (Feb. 13, 1997)  
  
Plaintiffs' Motion for Counter Summary Judgment (Feb. 28, 1997)

**K.H. v. DORSEY, et. al.**

FILE NO.,  
COURT AND  
DATE FILED: Civil Action No. 94-C-2157 (Circuit Court of Kanawha Co., W.V., filed 1994)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
PLAINTIFFS: Mary Downey  
1200 Boulevard Tower  
1018 Kanawha Blvd., East  
Charleston, WV 25301-2827  
(304) 344-2481

Mike Kelly  
P.O. Box 246  
Charleston, WV 25321

ATTORNEYS FOR  
DEFENDANTS: Charles Bailey  
Shuman, Annand, Bailey, Wyant & Earles  
405 Capitol Street, Suite 1007  
Charleston, WV 25301  
(304) 345-1400

ISSUES: This damages lawsuit was brought on behalf of a plaintiff child (who had previously been sexually abused by her father) against the Department and the individual caseworker alleging that she had been returned to her father's custody despite defendants' knowledge that she had again been sexually abused by him while in the custody of the Department, and where she was subsequently sexually abused by him when returned to his custody. This issues revolved around statute of limitations, application of equitable estoppel to statute of limitations, constitutional claims in light of De Shaney v. Winnebago County DSS, absolute, qualified, and quasi judicial immunity, and res judicata.

HISTORY AND  
STATUS: After many continuances, the case was eventually tried in Circuit Court. After a three week trial, a verdict was reached in the amount of \$1,250,000 in emotional distress damages.

As of December 1999, the parties were waiting for the judge to rule on Defendants'

Motion for New Trial.

KEY

DOCUMENTS: Motion for Summary Judgment primarily on issues of immunity and Statute of Limitations.

**K.H. v. MORGAN**

FILE NO.,  
COURT AND  
DATE FILED: No. 89-3158 (N.D. Ill., Sept. 23, 1990)

CITATIONS: 914 F.2d 846 (1990), 765 F. Supp 432 (1991)

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
PLAINTIFFS: Patrick T. Murphy  
Jeanette DeGrange  
R. Jane Burwell  
Susan T. Pierce  
Kathleen G. Kennedy  
Mary Burns  
Office of the Cook County Public Guardian  
2245 West Ogden Avenue  
4th Floor, Juvenile Court  
Chicago, IL 60612  
(312) 433-4300

ATTORNEYS FOR  
DEFENDANTS: Jeffrey W. Finke  
Assistant Attorney General  
Office of Illinois Attorney General Law Bureau  
100 West Randolph Street  
Chicago, IL 60601  
(312) 814-3276

ISSUES: In this § 1983 action the plaintiff alleges that the state violated her constitutional rights by removing her from her parents' home and placing her in various foster homes in which she was abused. Plaintiff claims that Illinois child welfare workers handling her case knew or suspected that her foster parents were child abusers, and that her rights were violated when she was, nevertheless, placed in their home and subsequently abused. Plaintiff also claims that her right to a stable foster home environment was violated by being transferred among several foster care homes.

HISTORY AND  
STATUS: Plaintiff filed a § 1983 action in 1990 against child welfare workers. The defendants moved to dismiss, claiming that they were entitled to qualified immunity. The district court held that they were not entitled to immunity. On appeal, the Seventh Circuit Court of Appeals held that the fact that the child had been transferred to multiple

foster care homes was not, in itself, a basis for liability under the circumstances of the present action for damages; that issue was more suitable for another type of proceeding. The court also held that the workers were not entitled to qualified immunity, as the right of a child to not be placed in a foster home where there is a known or suspected child abuser is clearly established. On remand, the district court held that amendments to the complaint challenging placement of children in foster homes and seeking injunctive relief transformed the case into a class action, and the present class and claims were already represented in on-going litigation.

**KEY**

**DOCUMENTS:** Defendants' Motion to Dismiss

**LETISHA v. MORGAN**

FILE NO.,  
COURT AND  
DATE FILED: No. 93 J. 4643 (N.D. Ill., filed Oct. 21, 1993)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
PLAINTIFFS: Patrick T. Murphy  
Peter J. Schmiedel  
Charles P. Golbert  
Paul Beard  
Matthew Clark  
Jessica Dickstein  
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ATTORNEYS FOR  
DEFENDANTS: Paula Giroux  
Assistant Illinois Attorney General  
General Law Bureau  
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Chicago, IL 60601  
(312) 814-3000

Esther Joy Schwartz  
Scott McMahon  
Stellato and Schwartz  
120 N. Clark Street, 34th Floor  
Chicago, IL 60602  
(312) 419-1011

ISSUES: This is a companion case to the class action, Letisha A. v. Morgan, filed in state court. After the James Bank Group Home was shut down pursuant to the state case, eleven children brought this companion federal civil rights case in federal court. The defendants were the state officials responsible for placing the children in the home and for monitoring the children's treatment in the home, the private corporation which owned the home, and various personnel employed by the home. The children

alleged, pursuant to 42 U.S.C. § 1983, violations of their substantive due process rights to an adequate and safe placement under the 14th Amendment against the state defendants, and tort violations under state law against the private defendants.

**HISTORY AND  
STATUS:**

After the defendants' motions to dismiss and strike and other pre-trial matters were litigated, the case proceeded to discovery. After completion of written discovery, a federal magistrate mediated a settlement agreement for a substantial monetary sum.

**KEY  
DOCUMENTS:**

Complaint (Aug. 3, 1993)

Amended Complaint (Oct. 21, 1993)

Motion to Dismiss and Supporting/Opposing Memorandum  
(Dec. 3, 1993)

Order to Dismiss with Leave to Amend Complaint (June 15, 1994)

Second Amended Complaint (July 8, 1994)

Settlement Agreement (Jan. 2, 1996)

**QUALLS v. CIRCLE FAMILY DAY CARE**

FILE NO.,  
COURT AND  
DATE FILED: 96-l-10548 (Cir. Ct. of Cook County, filed Sept. 11, 1996)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
PLAINTIFFS: Patrick T. Murphy  
Charles P. Golbert  
Peter Schmiedel  
Maura McMann-Zeller  
Office of the Cook County Public Guardian  
2245 West Ogden Avenue, 4th Floor  
Chicago, IL 60612  
(312) 433-4300

ATTORNEYS FOR  
DEFENDANTS: Scott McMahon  
Stellato & Schwartz  
120 N. Clark Street, 34th Floor  
Chicago, IL 60602  
(312) 419-1011

ISSUES: This damages lawsuit was filed on behalf of the estate of a child who was abused and starved to death by his mother. The defendant is the child welfare agency which contracted with and was paid public funds by the state of Illinois to monitor and supervise the home and family, and implement services to ensure that the child was safe.

HISTORY AND  
STATUS: The case was settled before trial at the end of discovery for a monetary sum.

KEY  
DOCUMENTS: Complaint (Sept. 11, 1996)  
  
Answer (Sept. 30, 1996)

**RACHEL W. v. SAMPSON**

FILE NO.,  
COURT AND  
DATE FILED: Case Nos. 324383; CV94-04159

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
PLAINTIFFS:

Laurence Berlin  
4205 E. Skyline  
Tucson, AZ 85718  
(520) 615-0034

Elliot Glicksman  
Stompoly, Stroud, Glicksman & Erickson, P.C.  
1820 Norwest Tower  
One South Church Avenue  
Tucson, AZ 85701  
(520) 628-8300

ATTORNEYS FOR  
DEFENDANTS:

Carl Hazlett  
Hazlett & Wilkes  
310 S. Williams Blvd., Suite 305  
Tucson, AZ 85711-4407  
(520) 790-9663

ISSUES: The plaintiff child was moved frequently to various foster homes for over three years before she was placed by the Casey Family Program in a state licensed foster program. While in the foster program, the 12 year-old plaintiff had sexual relations with another foster child who was seventeen, and with the adult son of the foster care agency owners. The plaintiffs allege that the state placed the plaintiff in this dangerous situation, and that it is liable for her ensuing injuries.

HISTORY AND  
STATUS:

This case is a damages action by one of the individual plaintiffs in Bogutz v. Arizona. The case is set for trial in April 2000.

**S.S. v. MCMULLEN**

FILE NO.,  
COURT AND  
DATE FILED: No. 98-1732 (W.D. Missouri)

CITATIONS: 186 F.3d 1066 (8<sup>th</sup> Cir. 1999)

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
PLAINTIFFS: Ellen Day Jervis  
Lisa A. Weixelman  
Polsinelli, White, Vardeman, & Shalton  
700 West 47th Street, Suite 1000  
Kansas City, MO 64112-1802  
(816) 753-1000

ATTORNEYS FOR  
DEFENDANTS: Jim McAdams  
Office of The Attorney General  
Broadway Blvd., 6th Floor  
227 West High Street  
Jefferson City, MO 65101  
(573) 751-3321

ISSUES: Plaintiff, an eight-year old-girl, alleges that three employees of the Missouri Division of Family Services violated her substantive due process right to be reasonably safe from harm. Specifically, the agency placed the plaintiff in her father's custody knowing that he associated with a convicted pedophile. Shortly after the plaintiff was placed in her father's custody she was sexually assaulted by that individual. Plaintiff argues that the state-created danger theory applies such that the agency employees had a duty to protect her and they affirmatively placed her in a position of danger that she otherwise would not have faced.

HISTORY AND  
STATUS: Plaintiff child brought a § 1983 action against state employees for placing her in the custody of her father. The district court dismissed the case and plaintiff appealed. In July 1999 the Eighth Circuit Court of Appeals reversed. The court held that plaintiff had stated an actionable claim for a violation of her substantive due process rights and that the agencies placement of the child in her father's home qualified under the "state-created" danger exception to liability. In September 1999 the judgment was vacated and rehearing *en banc* was granted. The case is set for oral argument in January 2000.

KEY  
DOCUMENTS: Defendants' Motion to Dismiss

**SERGIO A. v. STATE OF ARIZONA**

FILE NO.,  
COURT AND  
DATE FILED: Case Nos. C-320978; CV94-04159

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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John Escher III  
Gust Rosenfeld  
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**ISSUES:** Plaintiff, a foster child, alleges that the state, caseworker, and certain other individuals placed the him in the dangerous situation which resulted in his injuries. Specifically, the state failed to supervise, plan, or adequately licence foster care programs and related individuals.

**HISTORY AND STATUS:** This case is a damages action by one of the individual plaintiffs in Bogutz v. Arizona. The case is set for trial in March 2000.

**SHARONDA B. v. HERRICK**

FILE NO.,  
COURT AND  
DATE FILED: 97C1225 (N. D. Ill., filed 1997)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

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PLAINTIFFS: Patrick T. Murphy  
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Maura McMann-Zeller  
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Chicago, IL 60612  
(312) 433-4300

ATTORNEYS FOR  
DEFENDANTS: Gary Griffin  
Assistant Attorney General  
Office of Illinois Attorney General Law Bureau  
100 West Randolph Street  
Chicago, IL 60601  
(312) 814-3276

ISSUES: This § 1983 civil rights action was brought on behalf of 1) the estate of a child who was murdered while in state custody and 2) that child's siblings who were abused and neglected in state custody.

HISTORY AND  
STATUS: The motion to dismiss filed by defendants was denied. At the conclusion of discovery, the case settled on the eve of trial for money damages.

KEY  
DOCUMENTS: Defendants' Motion to Dismiss.

**TWO FORGOTTEN CHILDREN v. STATE OF FLORIDA**

FILE NO.,  
COURT AND  
DATE FILED: Case Nos. 95-19835 CA27; 96-05980 CA27,(filed Aug. 1995)

CITATIONS:

CLEARINGHOUSE  
REVIEW NO.:

ATTORNEYS FOR  
PLAINTIFFS: Karen Gievers  
Roy Wasson  
44 W. Flager Street Suite 750  
Tallahassee, FL 32301  
(850) 222-1961

ATTORNEYS FOR  
DEFENDANTS: Sheridan Weissenborn  
Jocelyn Pool  
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Miami, Florida 33114  
(305) 446-5100

ISSUES: Civil action for damages brought by two foster children (sisters) against the State for their excessive length of stay (more than 13 years), denial of family, separation from each other, and being subject to rapes, beatings, psychotropic medications, excessive force, restraints, and isolation.

HISTORY AND  
STATUS: The case was filed in August 1995. A jury trial ensued in October 1999, resulting in a verdict in plaintiffs' favor. A total judgment of \$ 4,425,000 was entered on October 22, 1999. As of December 1999, post trial motions were pending.

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