

JURY FINDS WASHINGTON FOSTER CARE SYSTEM UNCONSTITUTIONAL

By Bill Grimm

“All I ask is to put my brothers and sisters together” ... Not having to move around so much...”¹

On December 4, 2001, a Whatcom County, Wash. jury returned a verdict for plaintiffs in a class action brought on behalf of children in state foster care who had been subjected to frequent changes in placement. During the seven-week trial, plaintiffs’ attorneys presented testimony describing five harmful practices:

- Subjecting children to multiple placements and disruptions in school;
- Failing to adequately train, inform and support foster parents;
- Denying children necessary and effective mental health care;
- Placing children in unsafe homes or facilities; and
- Separating children from siblings in foster care.

Jurors deliberated less than a day before finding that the state’s Department of Social and Health Services (DSHS) violated the constitutional rights of abused and neglected children placed in DSHS custody by the states’ juvenile courts. *Braam v. State of Washington* was originally brought by Tim Farris, a partner in Brett and Daugert, a Bellingham, Wash. law firm.¹ The National

Center for Youth Law (NCYL) in Oakland, Calif. and Columbia Legal Services in Seattle later joined as co-counsel. Following NCYL’s entry into the case, the state retained Corr Cronin, a Seattle law firm specializing in class action defense to assist the Attorney General’s Office.

The case is significant for two reasons. First, the remedy will substantially improve the foster care system in Washington. Thirty-five hundred children should benefit immediately and directly, and there are countless others who will, in the future, enter a foster care system better able to meet their needs.

Second, this is one of the few cases to find a constitutional violation based solely on the psychological and emotional harm that inevitably accompanies moving vulnerable children from one foster home to another. The fact that Washington’s practices were found unconstitutional, and that the state has to pay monetary damages to the children who brought the lawsuit, will send a clear message to other states and cities with similar problems.

Background

Thirteen current and former foster children filed the initial complaint in this case in August 1998. They alleged that conditions in Washington’s foster care system violated their rights under the Fourteenth Amendment to the Constitution of the United States and various federal and state statutes enacted for the protection of children in state foster care. A claim under the Americans with Disabilities Act (ADA) was also included. Each of the plaintiffs sought damages for injuries suffered while in foster care as well as injunctive relief to halt defendants’ harmful practices. Defendants included the state of Washington, the Department of Social and Health Services, and the Secretary of DSHS.

¹ Farris and his firm were not new to child welfare issues. See, e.g. *McKinney v. State*, 950 P.2d 461 (WA. 1998) (negligent failure to disclose statutorily-required information about child placed for adoption); *Oostra v. Holstine*, 937 P.2d 195 (Wash. App. 1997)(statute of limitations for civil actions based on childhood sexual abuse began to run when abuse victim discovered nexus between sexual abuse and her teenage and adult problems); *Yonker By and Through Snudden v. State Dept. of Social and Health Services* 930 P.2d 958 (Wash.App. 1997) (mother and child have cause of action for negligent CPS investigation).

After determining that the practice of shuttling children from one placement to another affected many more children than at first believed, plaintiffs' counsel suggested to the children and their guardians ad litem (GALs) that the case be expanded to include all children now and in the future subjected to such instability. The children and their GALs agreed. Their commitment to stopping other children from suffering the same fate was so important, that they gave up earlier trial dates for their individual cases and made their pursuit of damages secondary to achieving reforms of the system. As Amie, one of the named plaintiffs, explained at her deposition when asked what this case is about:

This is about helping other kids in the future with difficulties with the State moving them from home to home and ... feeling neglected, rejected, not being stable in one home. It's to help future kids and people who are going to be going into the same system to stop the track record of being moved around so many times... My whole goal here is I have lived a really cruddy life, and I'm hoping that the system will change because I have lived in its since age 3, and it's a lot of placements I've been. I have had different caseworkers, different homes, different counselors, different everything... you dont' feel wanted.²

On July 10, 2000, plaintiffs moved for class certification naming the 13 original plaintiffs as class representatives. On July 30, 2001, the court certified the plaintiff class as:

All children who are now or who in the future will be in the custody of the Department of Social and Health Services foster care

² Deposition of Amie A., p. 9-10 (March 20, 2000)

system who have been placed by the Defendants in three or more placements and those children in the foster care system who are at risk to be placed in three or more placements by the Defendants.

Numerous pre-trial motions were considered and resolved by the Court. Defendants moved to dismiss plaintiffs' claims under federal statutes and the Due Process Clause of the Fourteenth Amendment that they were entitled to procedural safeguards (i.e. notice and some type of hearing or review outside the agency) prior to a change in their foster care placement. Though initially denied by the Court, upon reconsideration closer to trial, the judge granted the dismissal of these claims. Under the federal statute, only the child's parents were entitled to procedural safeguards when a change was to be made in the child's placement, he determined. Also dismissed were claims under the Americans with Disabilities Act and a similar state statute. The Court denied defendants' motions for summary judgment on substantive due process claims. Though the precise Due Process standard (e.g. 'substantial departure from professional judgment' or 'deliberate indifference') was not decided until trial, the Court held that there was sufficient evidence of constitutional violations for this question to go to the jury. In seeking dismissal of the Due Process claims, defendants argued that emotional or psychological harm could not arise to the level of a constitutional violation. The Court rejected this contention.

In yet another attempt to get the entire case dismissed, defendants filed a Motion for Summary Judgment based upon separation of powers.³ They maintained that the court had no authority to tell the legislature to appropriate additional funds

³ In *Alliance for Children's Rights v. Los Angeles Co. Dep't of Children and Family Services*, 116 Cal Rptr. 2d 288 (Ct App. 2ndDist 2002) the Court of Appeals held that an order requiring juvenile court review of DCFS decision to waive monthly caseworker visits to foster home did not violate separation of powers.

for foster care or to direct an executive agency how to expend funds and set priorities. The court denied this motion in large part because no remedial order was before the court. Any objection to the breadth of the court's order was premature. Certainly, if the court found that there were constitutional violations in the Department's foster care program, the Court had the authority to devise appropriate injunctive relief.

Less than two months before trial was scheduled to begin, DSHS hoped to delay or avoid a trial altogether by seeking discretionary appellate review of several of Judge Nichols' decisions. They challenged the Judge's class certification ruling, his denial of defendants' summary judgment motions on substantive due process claims, and his denial of defendants' motion to dismiss based upon separation of powers. On October 9, 2001, a week before trial was scheduled to begin, the Court of Appeals issued its ruling denying defendants' request for further appellate review and a stay of the trial.

Shortly before trial was to begin, the individual damage claims of the named plaintiffs were settled for \$1.3 million. Ordinarily, the remaining claims for an injunction to stop DSHS' harmful practices would then be heard by a judge. However, defendants insisted that the trial proceed before a jury. Under the terms of the Settlement Agreement, the plaintiffs agreed.⁴

Both parties submitted numerous Motions *in Limine*. Plaintiffs asked that Court bar defendants from introducing evidence of how poorly run other states' foster care systems were in comparison to the Washington State system. Judge Nichols determined that such a comparison was irrelevant and ruled it inadmissible. Washington could not excuse its own

⁴ *Settlement Agreement and Release of Claims*, p.3 ¶ 2. Earlier in the case, plaintiffs moved to bifurcate the trial asking the court to proceed with a jury trial on the individual damages claims but reserving the class claims for injunctive relief for trial before the judge. Judge Nichols denied the motion to bifurcate.

constitutional violations by arguing that other states also violated the rights of children in foster care.

Trial was held before a jury from October 15, 2001 to December 3, 2001. The children called sixteen witnesses including several of the class representatives, foster parents, defendants' administrators, social workers, the executive director of the state's foster parent association, a pediatrician, a child psychologist, and a former Secretary of the Department.⁵ Almost 300 exhibits were introduced or shown to the jury for illustrative purposes during the trial. Defendants called two witnesses – the current Secretary of DSHS, Mr. Braddock, and the Assistant Secretary of the Children's Administration, Ms. Oreskovich.

Summary of Evidence

Foster Care Overview

Washington's child welfare system is state-administered. The Children's Administration, which sets policy and oversees the system, is part of the much larger umbrella agency – the Department of Social and Health Services. There are six regions and more than 40 local offices, and there are approximately 10,000 children in the foster care custody of DSHS today. Although the system prides itself on the high percentage of children who are quickly returned home, other data suggest that as many as 25 percent of those children re-enter care within 12 months.⁶ Almost one-

⁵ Plaintiffs' attorneys in these class actions often have great difficulty getting persons with firsthand knowledge of the system to testify. Employees take little comfort in whistleblower statutes and the First Amendment. Many others have contracts with state defendants that they believe will be jeopardized if they take the stand to criticize agency practices. In *Braam*, all but two of the witnesses called by both parties were from Washington. Plaintiffs' success at trial was in large part attributable to the willingness of these witnesses to take the risks of being seen as testifying against the state agency. One of the two out-of-state witnesses for plaintiffs was Jean Soliz, former secretary of DSHS. The other was John Landsverk, a professor and researcher from San Diego, Calif.

⁶ Dee Wilson, "Reducing Multiple Placements," p. 12(November 2000). See also, *Children's*

half of Washington's foster children receive special payments due to the developmental, behavioral, and physical challenges they present.

Many children in foster care – almost 40 percent – experience a volatile, disturbing, and debilitating placement history during their commitment to DSHS custody. It is these children who make up the plaintiff class in this lawsuit. Defendants' records indicate that almost 3,500 children have experienced between three and 10 placements. Another 370 have had between 11 and 20 placements.⁷

Children in the foster care custody of DSHS are placed in several types of homes or facilities. A substantial minority of children is placed with relatives.⁸ Most foster children, however, live in foster homes. Most of these homes are licensed and supervised by DSHS; some only for a specific child. The state also contracts with private agencies that provide foster care placements for some children in DSHS custody. Altogether, there are approximately 6,300 foster homes in the state. The turnover rate among foster parents is staggering. In recent years, more than 1,200 foster families a year left the system. The state itself admits that there is not an adequate supply of foster homes to meet the needs of children entering the system.⁹

Administration Outcome Measures Monthly Reports.

These reports indicate a somewhat lower rate of re-entry by redefining the children who are counted as a re-entry. Only children whose previous placement lasted more than 60 days and whose re-entry lasts more than 30 days are included. Plaintiffs discovered defendants also readjusted data on the number of placements by changing the definition of 'placement.'

⁷ Exhibit 171 introduced at trial was a list of the names of children in foster care and the number of placements they experienced since DSHS assumed custody. The last names were deleted before the exhibit was admitted and shown to the jury.

⁸ In 1999, 34 percent of children in out-of-home care were placed with relatives. Children's Administration, DSHS, *Building a Future for Washington's Children: Foster Care Improvement Plan*, p.5 (May 5, 2001).

⁹ Children's Administration, DSHS, *Building a Future for Washington's Children: Foster Care Improvement Plan*, p.6 (May 5, 2001).

The Plaintiff Class

Plaintiffs produced several of defendants' own reports and elicited testimony from defendants' administrators that a substantial number of children in foster care are shuttled from one placement to another. The documentary evidence, including a comprehensive analysis of foster care data for the period 1985-1995, confirmed that this practice goes back more than a decade. More recent reports indicate that the practice continues today.¹⁰

There is some dispute over whether the percentage of children in three or more placements has actually diminished during the last few years. At best, it appears that the number of foster children who are moved frequently is no better now than in 1994.

There is also a dispute over what constitutes a placement. Plaintiffs elicited testimony from several of defendants' administrators, including Director Oreskovich, that several years ago defendants began excluding certain short term (*e.g.* less than five days) and other types of placements from their official count of the number of placements per child. The evidence also indicates that defendants' current definition of placement is at odds with federal mandates.¹¹

Regardless of what definition of placement is applied to children in foster care in the state of Washington, the size of the plaintiff class remains large. Substantial numbers of children – in the thousands – wander through one house, one facility, or another while in defendants' custody. For these children, stability and permanence is an empty, unfulfilled promise. These are children who go to bed every night in a house that is not their home; they share their bedroom with a frequently shifting group of unrelated individuals; and they live with a series of families or in a variety of institutions but have no permanent family of their own.

¹⁰ *E.g., Children's Administration Outcome Measures Monthly Reports.*

¹¹ 42 U.S.C. §679, 45 C.F.R. 1355.40 and Appendices A and B, and the *Child Welfare Policy Manual* §1.2B.7.

Harm of Multiple Placements

Plaintiff's first witness was Amie Watkins. Amie was placed in defendants' custody when she was three years old and spent the rest of her childhood, youth, and adolescence in foster care. She poignantly described all the things that change when a child is moved from placement to placement – the rules of the house, the stranger she shared her bedroom with, schools, teachers, classmates, caseworkers, counselors, pets, holidays celebrated, even religions. Single parents ran some of the households; married couples served as her foster parents in others. Moving from one house to another was like having bags packed all the time, always a suitcase by the door, and being scared about what the next day would bring. The first night in the new placement was always sleepless as she wondered if her new "parents" would like her, and what the school would be like.

The importance of placement stability to the well being of children in foster care is emphasized in at least three separate sections of the Washington Revised Code. State legislation provides that:

- "...Placement disruptions can be harmful to children by denying them consistent and nurturing support..."¹²;
- "...The *right of a child's* basic nurturing includes the right to a safe, *stable and permanent home* and a speedy resolution of any proceeding under this chapter [juvenile court proceedings]"¹³; (emphasis added)
- "The legislature declares that the State of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of children, including those who receive care away from their own homes...*Children placed in foster care are particularly vulnerable and have a special need*

for placement in an environment that is stable, safe, and nurturing."¹⁴ (emphasis added)

At trial, the experts agreed that this pervasive practice of moving children frequently from one placement to another harms children in foster care. Defendants argued that the nature and extent of the harm suffered by multiple placements varies from one child to another. While some children may survive the practice of being abruptly removed from one placement and shuttled to another, there is little doubt that the practice is harmful to the plaintiff class. Each named plaintiff was moved at least three times while in the defendant's custody. Most were moved many more times. Plaintiff Amie Watkins was in more than 25 placements. During a single year in foster care she was moved eight times. Plaintiff Tim Olson was in 13 different foster homes before he was two years old. All of the class members, some to a greater degree than others, suffer from this practice.

Defendants, primarily through the introduction of documentary evidence and the cross examination of plaintiff's experts, emphasized that most of the named plaintiffs had entered foster care after age five. They elicited testimony that Reactive Attachment Disorder (RAD), one of the diagnoses often given to named plaintiffs, develops before age five. They argued, therefore, that the illness from which plaintiffs suffered could not be attributed to defendants' actions or omissions.

This defense argument ignores other facts in evidence. First, several of the named plaintiffs, Tim Olson and Amie Watkins, entered care at a very young age and were shuttled to different placements while not yet five years old. Furthermore, while older class members may be more frequently subjected to multiple placements, pre-school children are also subjected to this practice. More importantly, the harm from which plaintiffs must be protected while in defendants' custody is not so narrowly defined as to be limited to a single

¹² RCW 74.13.310.

¹³ RCW 13.34.020.

¹⁴ RCW 74.13.010.

psychiatric diagnosis (RAD). As set forth below, the jury heard evidence from many experts attesting to the harmful effects of multiple placements.

Eric Trupin, Ph.D., a respected University of Washington psychologist, frequent consultant to DSHS, and the Governor's appointed chairman of one of the earlier task forces on foster care, testified at length about the harmful impact of multiple placements. He explained that a change in placement is a traumatic event for children. For some, the despair and misery of not having a stable home leads them to act out violently. Others become hardened and lose the capacity to develop trusting relationships. Kathleen Westover, M.S.W. explained how multiple placements interrupt the completion of developmental stages and tasks that all children must go through to reach maturity. Children who are moved around believe that "I must have done something bad because I'm getting moved." Each new move is experienced as another loss for the child and her sense of safety is violated. Other harmful results of placement instability include nightmares, enuresis and enuresis, inability to concentrate in school, and difficulty making friends. Timothy Buckley, M.D., a local physician who sees many foster children in his practice, also was of the opinion that multiple placements inhibit the child's ability to trust and form attachments with adults. Such children act out their rage, do not develop a conscience, and become conduct disordered or worse – sociopaths. Buckley also pointed out that changes in placement greatly reduce a child's chance for success in therapy.

Plaintiffs called one out-of-state expert, John Landsverk, Ph.D., whose research with foster children corroborated the earlier testimony of plaintiffs' experts on the harmful impact of multiple placements. Landsverk is a professor of sociology at San Diego State and director of Research at Children's Hospital in San Diego. For more than a decade his research has focused on children in foster care, and he is the principle investigator on a number of studies

of foster children being conducted for the National Institutes of Health.

Landsverk testified about research he conducted to determine if children were adversely affected by multiple changes in placement.¹⁵ Using standardized measures of behavioral and mental health, the study looked at children shortly after entry into foster care and approximately 18 months later. The foster children in the study were divided into two groups – those who showed significant behavioral problems at the time of entry and those who did not. Landsverk found that children who were relatively healthy when they entered foster care and who were subjected to multiple placements became sick and developed behavior problems. Controlling for other variables, it was the multiple placements themselves that caused the children to get sick. Not only did their behavior change for the worse but they also showed increased "internalizing problems" – (e.g., clinical depression).

Frequent changes in placement also have a significant negative impact upon a child's educational progress. Defendants' most recent Task Force report states, "the majority of children in foster care are placed away from their home school districts..."¹⁶ Trupin pointed out that foster children who move around end up missing school and spending considerable time just adjusting to new classes and new teachers, resulting in a negative impact on their academic progress and adjustment. Since many children in foster care have special educational needs, the frequent disruptions in their schooling compound the problems associated with those disabilities. Plaintiff Amie Watkins, a special education student, told how with each move she fell farther and farther behind. Recent reports indicate that a mere

¹⁵ Rae R. Newton, Alan J. Litrownik, John A. Landsverk, *Children and Youth in Foster Care: Disentangling the Relationship Between Problem Behaviors and Number of Placements*, 24 *Child Abuse And Neglect* 1363 (2000).

¹⁶ *Building a Future for Washington's Children: Foster Care Improvement Plan*, p.6 (hereinafter '2001 Foster Care Improvement Plan').

30 percent of foster children in Washington graduate from high school.¹⁷

Despite one study after another documenting the continuing prevalence of frequent moves while in foster care and all the while conceding the harmful impact of such instability on the mental health of the children in its custody, the Administration failed to focus its attention on the needs of this subgroup of children. It further failed to modify its policies and practices substantially so as to reduce the incidence of placement breakdowns and to ameliorate the harm inflicted by pervasive instability.

Separation of Siblings¹⁸

¹⁷ HB 2356, introduced in the Washington legislature on January 15, 2002, would require that a child in foster care fewer than 60 days continue to attend his home school unless the court determined it was not in his best interests. SB 6709 directs DSHS, in cooperation with the office of superintendent of public instruction, to prepare a proposal for consideration by the legislature to address the issue of educational stability and continuity for children who are in short-term (less than 75 days) out-of-home placement.

¹⁸ SB 6702 introduced in the 2002 session would require that siblings have regular visits with one another and that agency reports to the court include an assessment of the relationship and emotional bond with siblings. See also, William Wesley Patton, *The Status Of Siblings' Rights: A View Into The New Millennium*, 51 DEPAUL L. REV. 1 (2001); William Wesley Patton and Sara Latz, *Severing Hansel from Gretel; An Analysis of Sibling Association Rights*, 48 U. OF MIAMI L. REV. 745 (1994) for a comprehensive analysis of sibling rights. Recognizing the importance of sustaining sibling relationships the Maryland legislature provides that any sibling who is separated due to a foster care or adoptive placement may petition a court, including a juvenile court with jurisdiction over one or more of the siblings, for reasonable sibling visitation rights. Md. Fam Code § 5-525.2. See also, *In Re Tamara R.*, 764 A.2d 844 (Md. Ct. App. 2000). California recently amended its dependency laws to provide that (1) if practical and appropriate, siblings and half-siblings are to be placed together when they first enter care. Welf. and Inst. Code §306.5; (2) the juvenile court may decline to terminate parental rights where it finds that there would be a substantial interference with a child's sibling relationship. Welf and Inst. Code §366.26 9c)(1)(E) (effective January 1, 2002). Hawaii Revised Statutes §587-53(f) requires "every reasonable effort ... to place siblings or psychologically bonded children together, unless the placement is not in the best interests of the children."

Plaintiff class members' frequent changes in placement also harm children as they are often accompanied by their separation from brothers and sisters in foster care. The loss of contact among siblings in foster care is common. Secretary Soliz described a foster care placement system driven by "desperation," a system in which the primary goal was simply to find a bed for a child, any bed. As a result, siblings are separated. Department policy agreed that brothers and sisters should be kept together. Secretary Soliz pointed out that children's anxieties and fears are reduced when they are placed together with their siblings. Trupin's testimony corroborated Secretary Soliz's statements. As a child psychologist, he was of the opinion that it is in their best interests for children to maintain their family ties with siblings. Buckley concurred with this opinion.

Unsafe Placements: Sleeping in Offices

The jury heard testimony of other harmful practices to which plaintiff class members are subjected. Some of the plaintiff class members have no "placement" at all. Plaintiff Ivory Hardin was one of those children whose "home" for a while was a DSHS office. Trupin visited with a child placed in a DSHS office just a month before trial. Defendants admit that children in the state's custody are forced to sleep in DSHS offices where they are not provided with even the most rudimentary accommodations. There are no beds for them to sleep on, no bed linens are supplied, food is sparse, and privacy is non-existent. This practice did not arise just this month or even this year. It is a practice that has continued unabated for years. It is a practice known to exist and tolerated, if not condoned, by the chief administrators of the agency.

Placements with Sexually Aggressive Youth

One of the unfortunate, tragic consequences of child abuse is that sometimes victims of the abuse become

aggressive and abusive.¹⁹ Washington's legislature recognized this in enacting laws pertaining to the treatment of Sexually Aggressive Youth (SAY) RCW 74.13.075. Despite the known risks to children in foster care, defendants have long engaged in the practice of placing SAY in the same home as other vulnerable foster children. The risk to other children is great. Plaintiffs' expert Trupin attested to the harm such placements inflict even when there is no overt physical injury. Diana Brook, a former caseworker, confirmed that SAY youth were placed in the same bedrooms with other kids, placing both children at risk: re-offending and offended. Younger children also have been harmed by defendants' practice of placing out-of-control, physically aggressive youth in the same home. Plaintiff Ivory Hardin was raped in a foster home when she was four years old. She was sexually molested in another foster home when she was five years old. Former Secretary Soliz described the rape of an eight-year-old girl that resulted from this practice of placing aggressive youth in the same foster home as younger, vulnerable children. When the eight-year-old girl or the aggressor youth then needs to be moved, it is the defendants' practice that can truly be said to have caused the move.

Inadequate Training, Support, and Disclosure to Foster Parents

Defendants suggest that the children themselves are responsible for the chaotic placement history. Upon entering care, they manifest such problem behaviors and have such great needs that they try the patience of their caregivers until their foster parents ask for their removal. The evidence produced by plaintiffs, however, indicates that there are numerous practices of defendants that contribute to and cause foster children to move.

¹⁹ Cathy Spatz Widom, *Childhood Victimization; Early Adversity, Later Psychopathology*, National Institute of Justice Journal (January, 2000), Cathy S. Widom and Michael G. Maxfield, *An Update on the Cycle of Violence*, National Institute of Justice Research in Brief (February, 2001).

Inadequate support and training for foster parents who are caring for class members was identified as a cause of breakdowns in children's placements by several witnesses, including Dee Wilson, a regional administrator and Darlene Flowers, executive director of Foster Parent Association of Washington State (FPAWS). They explained how DSHS weakened its requirement that caseworkers visit the foster home once every 30 days to once every 90 days. The 30-days mandate was good social work practice, according to Wilson.²⁰ In his opinion and that of Flowers, it was what foster parents needed to ensure adequate care of the children in their homes. Since the every-30-days policy had been adopted, the needs of foster parents for this kind of support had not diminished, yet the policy was changed. The policy was weakened simply because DSHS could not comply.

The 90-days visitation policy is but one example of how defendants' policies and practices are a substantial departure from professional social work practices and standards. Several witnesses, including Wilson, Brook, and Flowers, cited other practices such as the separation of siblings; compelling children to sleep in DSHS offices; placing sexually aggressive or violent youth in the same homes as other foster children; placing youth with severe behavior problems with foster parents unable to care for them; failing to provide foster parents with sufficient information about the child being placed in their home and giving them a "passport" for the child; and the failure to follow the placement and/or treatment recommendations of the child's mental health provider.

Flowers identified several other policies or practices of defendants that in her opinion were substantial departures from professional standards. She recounted how

²⁰ See also, *California DSS Manual of Policy and Procedures* Division 31, Section 320.2 requiring that the worker to visit the child at least three times in the first 30 days and at least each calendar month thereafter. A waiver of this requirement is permitted under certain circumstances.

defendants had eliminated the requirement that foster parents complete annual in-service training following the initial 18 hours of training required for licensure. This change in policy as well as the failure to provide a viable system of respite care to foster parents represented a substantial departure from professional standards.

Foster Parent Training

Foster parent training is key to achieving greater stability for children in foster care. Several sections of Washington's Revised Code acknowledge its importance to maintaining stable placements for children:

Pre-service training is recognized as a valuable tool to reduce placement disruptions, the length of time children are in care, and foster parent turnover rates.²¹

Adequate foster parent training has been identified as directly associated with increasing the length of time foster parents are willing to provide foster care and reducing the number of placement disruptions for children.²²

Pre-service and in-service training requirements for foster parents vary widely from one state to another.²³ The importance of adequate training to the well-being of children in foster care was made clear in recent amendments to federal law. States are now required to ensure:

that, before a child in foster care under the responsibility of the State is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will

be continued, as necessary, after the placement of the child.²⁴

National standard setting organizations require both pre-service and annual in-service training of all foster parents but set more stringent training requirements for treatment or therapeutic foster parents than others.²⁵ For example, the Council on Accreditation (COA) mandates 30 hours of competency-based training before a treatment foster parent receives a child for placement and 24 hours annually of in-service training.²⁶ Child Welfare League of America (CWLA) standards emphasize that training must provide new foster parents with both knowledge and skills to provide care to children. CWLA standards specify the topics to be addressed in training and suggest joint training with adoptive parents.²⁷ Competency-based in-service training is a required not an optional service to be provided annually to every foster parent. Through such advanced training, foster parents should acquire competency in such areas as responding to behaviors that are symptomatic of sexual abuse and understanding and managing effects of substance abuse.²⁸ Finally, CWLA standards require an individualized "development plan for each foster parent that identifies those areas in which additional training or other supports are needed."²⁹

Several organizations have published curriculums that may be supplemented for use in a particular state. For several years Washington used one of these standard training packages – SCOPE. At the trial, the agency's director explained that SCOPE was being replaced with

²⁴ 42 U.S.C. §671 (a)(24).

²⁵ COA S21.9.01.

²⁶ COA S21.15.06.

²⁷ Child Welfare League of America, *Standards of Excellence for Family Foster Care Services*, §§ 3.7 and 3.8 (1995).

²⁸ *Standards of Excellence for Family Foster Care Services*, §3.34.

²⁹ *Standards of Excellence for Family Foster Care Services*, §3.35.

²¹ RCW 74.13.250 (1).

²² RCW 74.13.310.

²³ See the website of the National Foster Parent Association for a summary of state policies: <http://www.nfpainc.org/TrainHrs.html>.

another curriculum – PRIDE. PRIDE is a 27-hour competency-based, pre-service curriculum for prospective foster/adoptive parents. Agencies may use all 27 hours prior to licensing and remaining segments after licensing. PRIDE is team taught by a certified foster/adoptive parent and a certified agency worker. Several other states have adopted PRIDE as their pre-service training.

Evidence at trial pointed out that adoption of a curriculum does not assure its implementation. Testimony revealed that many licensed foster parents in Washington had not completed the SCOPE training during the time it was required by the agency. Even more disturbing was the testimony of Darlene Flowers, that the state had recently eliminated all mandatory in-service training.³⁰

As the CWLA and COA standards stress, introductory basic courses are not adequate when asking foster parents to care for children who have many behavioral and emotional needs. Washington’s legislature explicitly recognized this need and had directed the agency to:

“develop additional training for foster parents that focuses on skills to assist foster parents in caring for emotionally, mentally, or physically handicapped children.”³¹

Surveys of Washington’s foster parents for the last several years indicate that training in responding to the behaviors and meeting the emotional problems of children was the highest priority throughout the state. During her eleven years with DSHS, Brook held a number of casework, supervisory, and management positions. She was a CPS worker and supervisor. For the four years just prior to leaving the agency, she was a manager in the Division of Licensed Resources. She found that a majority of foster parents lacked the education, experience, or training to parent

appropriately foster children who exhibited emotional and behavioral disturbances.

Plaintiffs’ witness Landsverk described the success of a foster parent training and support program developed at the Oregon Social Learning Center. Studies published in several professional journals described the model tested by OSLC.³² With funding from the National Institute of Mental Health, Landsverk is replicating the OSLC model in a much larger metropolitan area – San Diego, Calif. – with some promising preliminary findings.

Respite Care

Respite care is an essential component of any foster care system and part of a strategy to ensure greater stability for special needs children in care. The National Foster Parent Association (NFPA) has developed a manual and training program to assist agencies and local associations with the creation of a system of respite care. NFPA points out that “to assure stability for children and families, agencies must have a planned support and respite care program in place.”

Evidence at trial indicated that respite care was another supportive service identified in past task force reports as lacking in the Washington system.³³ While there were funds appropriated for respite care, FPAWS director Flowers pointed out that money was not so much the issue as a failure to recruit persons to provide respite care. Such providers would not be part of

³⁰ Neither Braddock nor Oreskovich contested this testimony.

³¹ RCW 74.13.310.

³² Chamberlain, P. (2000). What works in treatment foster care. In M. P. Kluger and G. Alexander and P. A. Curtis (Eds.), *What works in Child Welfare* (pp. 157-162). Washington, DC: Child Welfare League of America; Fisher, P. A., and Chamberlain, P. (2000) Multidimensional treatment foster care: A program for intensive parenting, family support, and skill building. *Journal of Emotional and Behavioral Disorders*, 8, 155-164; Meadowcroft, P., Thomlinson, B., and Chamberlain, P. (1994). Treatment foster care services: A research agenda for child welfare. *Child Welfare*, 33, 565-581; Moore, K. J., and Chamberlain, P. (1994). Treatment foster care: Toward development of community-based models for adolescents with severe emotional and behavioral disorders. *Journal of Emotional and Behavioral Disorders*, 2, 22-30.

³³ E.g., *Foster Care Improvement Plan 2001*, p. 25.

the general foster parent pool. Rather they would be recruited, trained, and available to take in children for brief periods of respite after which the child would return to his foster home. Flowers' organization was instrumental in getting the national organization to conduct a training of trainers for respite care but the implementation of the program stalled when DSHS officials dragged their feet.

Disclosures of Information

Considerable testimony was introduced supporting plaintiffs' allegations that foster parents are not given accurate or complete information about the children placed in their homes. There is no dispute that defendants have a legal obligation to provide such information. Provisions of the Washington Administrative Code describe this duty:

Sufficient information about the child (especially behavioral and emotional problems) and his or her family will be given to foster parents to enable them to make an informed decision regarding whether or not to accept a child in their home.³⁴

Marilyn Delegard, one of Amie's foster parents described how the agency's failure to disclose Amy's history of sexual abuse and acting out in previous foster homes led to their request that Amie be removed from their home. Vickie Braam, foster/adoptive mother to plaintiff Jessica Braam, recounted a similar experience when Jessica was placed in her home. Wilson confirmed that failing to provide adequate information about the child to foster parents contributes to multiple placements.

Former DSHS Secretary Soliz retained Jill Cole, Ph.D. to conduct a health and safety audit of foster care in 1995. In her report, Cole observed, "too little information is known or shared about children in foster care." "Foster parents need information

about the children who will come to their homes." She reported, "In foster parent focus groups statewide, the most central issues repeatedly identified were ... access to information." She illustrated the problem by describing "a 5-year-old-boy I met during the November [1994] 'health and safety review. ... Although the child had been in this foster home for three months, the foster parent had been given no information about this child, about his permanency plan, or his specific emotional or health care needs..."³⁵ This practice has continued for 10 years or more. Director Oreskovich conceded that providing foster parents with adequate information about the children placed in their homes was still a major unresolved issue.³⁶

Passports

For more than a decade, federal law has required that the mandated case plan include the child's health and education records. Those records must be shared with the foster parent and accompany the child to each new placement. The case plan must be completed no later than 60 days after the child enters care. In 1997, Washington's legislature enacted a bill requiring DSHS to create such "passports" but failed to provide sufficient funds to complete passports for all eligible children.³⁷

Defendants' produced evidence that thousands of passports are being completed for children in foster care. The passport is a summary of the child's medical and educational history that is made part of the child's record and supposed to be distributed to the foster parent. Passports are completed by public health nurses (PHNs) under contract with defendants. However, defendants do not refer a foster child to a PHN until after the child has been in care for

³⁴ WAC 388-73-212.

³⁵ Jill Cole Ph.D., *Independent Health and Safety Advocate's Review for DSHS: Phase One Report to the Governor*, pp. 1,4,6 (February, 1995).

³⁶ See also, *2001 Foster Care Improvement Plan*, p. 22, Action Step #8.

³⁷ RCW 74.13.285. A similar federal mandate was enacted a decade earlier. 42 U.S.C. §675 (1) C and 5 (D).

90 days. It often takes months after the referral for the passport to be completed. More disturbing was the testimony of Darlene Flowers, of the state foster parent association, that only five percent of the foster parents she spoke with in the last year (400-500) received a copy of the passport. Buckley reported a somewhat higher percentage of completed passports for his foster child patients but it is apparent that a majority of caregivers do not receive them.

Mental Health

The Court heard considerable uncontroverted testimony that the mental health needs of children entering foster care have been well documented in Washington.³⁸ Such documentation goes back more than a decade. A recent study conducted by plaintiffs' witness Lucy Berliner, a clinical associate professor for Social Work at the University of Washington, confirmed the high incidence of mental and behavioral health problems among children in foster care today. Defendants have been on notice that the magnitude of this need was great and that it was unmet. Indeed, the testimony and documentary evidence concerning the named plaintiffs attests to the needs of these children for prompt and effective treatment. The failure to assess the mental health needs of class members and to provide the treatment recommended by such evaluations is a significant cause of the unstable living

conditions suffered by plaintiffs. Without changes in the assessment and treatment of the mental health needs of class members, they will continue to move through a series of placements never achieving stability, safety, or permanence -- the very reasons defendants assumed their custody.

One of defendants' highest-ranking administrators, Dee Wilson, attested to the need for significant improvements in mental health services. One-half to two-thirds of all children entering foster care today suffer from severe emotional disorders. Completing an assessment of these children's mental health needs is part of the professional standard of care. Defendants fail to conduct these assessments for plaintiff class members. Plaintiffs' witness, Diana Brook was of the opinion that this failure was a substantial departure from professional standards. Buckley pointed out how this and other practices related to mental health care of foster children were substantial departures from professional standards such as those adopted by the American Academy of Pediatrics. These are not newly adopted standards but were published in 1987 and 1994.

Wilson's testimony also addressed the failure to provide necessary mental health treatment to foster children. In his opinion, necessary treatment was not being provided in part because many of the treatment providers to whom defendants' take children are not sufficiently trained to meet their needs. Former DSHS caseworker and supervisor Brook concurred with Wilson. A similar finding in a Washington federal class action involving the claims of involuntarily confined sexual predators led Judge Dwyer to require defendants, as part of a constitutionally adequate treatment program, to adopt and implement a plan for hiring and training *competent* therapists and to provide an expert in treatment of sex offenders to supervise and consult with the treatment staff.³⁹

Trupin was also of the opinion that foster children are not receiving necessary

³⁸ E. Trupin, V. Tarico, B Low, R. Jemeka, & J. McClellan, Children on Child Protective Services Caseloads: Prevalence and Nature of Serious Emotional Disturbance, 17 Child Abuse & Neglect, 345 (1992); [Takayama JI, Bergman AB, Connell FA](#), Children in Foster care in the State of Washington. Health care Utilization and Expenditures, 271 JAMA1850 (June,1994). Though Bergman recently authored a scathing indictment of the system's failure to provide adequate health care to children in out-of-home placements, he declined to testify. A. Bergman, The Shame of Foster Care Health Services, 154 Arch Pediatr Adolesc Med.1080 (Nov. 2000). At the time of trial, he was working under a fellowship from the Soros Foundation to improve health services by working on an interagency group set up by DSHS.

³⁹ *Sharp v. Weston*, 233 F.3d at 1168 (9th Cir. 2000).

mental health services. Many of the children not receiving such services are members of the plaintiff class – children and youth with behavior problems who have a chaotic placement history. He testified that there are numerous adverse consequences for these children. They continue to exhibit serious behaviors; are less likely to be reunited with their biological parents; very likely to begin to abuse substances and drop out of school; and have a high likelihood that they will break laws in the community and end up in the juvenile justice system ultimately in prison.

Lucy Berliner, who frequently sees foster children and recently helped develop national standards on effective treatment for children experiencing traumatic events or suffering abuse or neglect,⁴⁰ testified about a recent study of the foster care population mandated by the Washington legislature. Among the findings, the authors determined that 51 percent of children in “enhanced family foster care” received no mental health services in the previous month. Since eligibility for enhanced family foster care requires that a child demonstrate special treatment needs and/or behavioral problems, the failure to provide treatment to this population is particularly disturbing. The study corroborated the testimony of Wilson, Brook, and Trupin that children in foster care are not receiving the mental health treatment they need. Berliner’s testimony also concurred with the earlier opinions of Trupin – if foster children do not get treatment they will get into a downward spiral and their misbehavior worsens. Ultimately, these youth’s misbehaviors and aggression lead them to the juvenile justice and adult criminal justice systems. Undeniably, this unchecked progression into criminal behavior is harmful to both the children whose treatment needs went unmet and the members of the public who eventually become their victims.

⁴⁰ Saunders, B.E. Berliner, L. and Hanson, R.F., *Guidelines for the Psychosocial Treatment of Intrafamilial Child Physical and Sexual Abuse* (Final Draft Report, July 30, 2001).

Defendants introduced documentary evidence and elicited testimony from witnesses indicating that many of the named plaintiffs had received mental health services while in defendants’ custody. This testimony largely emphasized the amount of money spent on their treatment and that the cause of many of plaintiffs’ health problems related back to the treatment by their biological parents. Little evidence was provided in documenting its effectiveness. Indeed the ineffectiveness or outright inappropriateness of the treatment provided to at least one of the plaintiffs appears to have been conceded by defendants. Plaintiff Ivory Hardin received over \$60,000 worth of “treatment” from the Attachment Center Northwest – a private agency that provides “holding therapy.” Director Oreskovich has since banned the use of holding therapy for all foster children. For several of the named plaintiffs, the treatment was constantly disrupted, usually by changes in placement.

The Defense

In their pre-trial submissions, defendants indicated that they intended to call 35 witnesses including many out-of-state experts. At trial, they called only two witnesses – Secretary Braddock and Assistant Secretary Oreskovich.

Defendants first theory of defense was that the problems plaintiffs complained of were in the past. With additional funds appropriated through 2003, DSHS planned to make further reforms, though they did not tell the jury that the five harmful practices documented by plaintiffs would be eliminated.

Secretary Braddock’s entire testimony was a description of the *Kids Come First Agenda*. As the jury was shown an exhibit listing the plans for improvement under the KCFA, Secretary Braddock explained what improvements the agency intended to make over the next two years with the funding appropriated by the legislature. Braddock was permitted to talk about other initiatives the agency planned to implement even though they would not

benefit the children in the plaintiff class – e.g. increasing funds for juvenile offenders. Plaintiffs’ counsel was not permitted to question Braddock about the Governor’s proposed reductions in the budget and what anticipated impact it would have on the foster care program.⁴¹

Assistant Secretary Oreskovich’s testimony lasted several days and also focused on recent changes and improvements. Several lengthy exhibits – DSHS’ most recent Annual Report, the May 2001 Foster Care Improvement Plan, and *DSHS Initiatives to Improve Permanency Outcomes: 1995 to the Present* – were introduced or discussed during her testimony. Each of these addressed the alleged improvements made by DSHS during the last few years or changes that were in the works at the time of trial. Although the exhibits contained statements, charts, and graphs not relevant to the case, these exhibits were shown to the jury. With one exception, the jury was permitted to take these exhibits with them during their deliberations.

Another defense theory focused on the children’s lives before foster care – placing blame for the children’s problems on their parents. Defense exhibits and cross-examination of plaintiffs’ witnesses focused mostly on what had happened to the named plaintiffs before they were placed in foster care. Attorneys for DSHS stressed that the disabilities, behaviors, and emotional problems of the plaintiffs were the result of their abuse and/or neglect at the hands of their parents. For each of the named plaintiffs they introduced two charts. The first was a pie chart illustrating the percentage of time spent with their parents and time in DSHS custody before age five. The second listed the types of maltreatment suffered by each child and the parents’ history of substance abuse, incarceration, and mental illness. The jury appears to have looked beyond this defense and considered

⁴¹ It is now apparent that child welfare services will not be held harmless from the substantial budget cuts being considered in Olympia.

what happened to the children after DSHS assumed custody.

Applicable Law

The state, upon assuming custody of a child who has been the victim of abuse and/or neglect, has an obligation to provide care that both protects that child from further harm and promotes the child’s well-being. This obligation includes both the child’s physical and emotional well-being.⁴² Indeed, Washington state law explicitly recognizes that abuse and neglect of children includes both harm to the child’s emotional well-being as well as physical injury. The state’s Juvenile Court Act, RCW Chapter 13.34, defines a dependent child to include any child whose custodian is not providing or capable of providing adequate care for the child, such that the child is in circumstances which constitute a *danger of substantial damage to the child’s psychological or physical development*.⁴³ (emphasis added). Certainly the state cannot engage in the same behavior as that which justifies its intervention into the constitutionally protected right of a parent to raise his or her child. The defendants’ obligation to meet the mental and emotional health needs of foster children is repeated in RCW 74.14A.050 requiring that they shall:

- (2) Develop programs that are necessary for the long-term care of children and youth that are identified for the purposes of this section. Programs must: (a) Effectively address the educational, physical, emotional, mental, and

⁴² *Marisol v. Giuliani*, 929 F. Supp. 662, 675 9S.D. N.Y. 1996); *B.H. v. Johnson*, 715 F. Supp. 1387, 1395 (N.D. Ill. 1989).

⁴³ RCW 13.34.030 (5). In 1997, DSHS substantiated 1595 complaints of emotional or psychological abuse of children in Washington. Child Welfare League of America, National Data Analysis System <http://ndas.cwla.org.asp>.

medical needs of
children and youth;
...The programs must
be ready for
implementation by
January 1, 1995;

The evidence in this case documents actions and omissions of the Children's Administration that endanger the physical safety of children in foster care, harm their emotional health, and interfere substantially with their development.

Many if not most of the plaintiff class members suffer from mental or emotional disorders. Defendants correctly point out that many of the children's disabilities are likely the result of the maltreatment they received prior to their commitment to the defendants' custody. This fact, however, does not permit defendants to engage in practices that knowingly exacerbate the child's illness or further injure the child. It is no more lawful for the state to allow a child's emotional well-being to deteriorate than to allow a physical injury to fester and go untreated. The state must provide children in its custody with mental health services that give them a realistic opportunity to be cured or improve the mental condition that existed at the time the state assumed custody of them⁴⁴. Children in foster care are entitled to more considerate care and treatment than prisoners and at least the same level of care the state is constitutionally required to provide adult sexual offenders civilly committed to the state's institutions⁴⁵.

The failure to provide children in foster care with safe and stable homes and adequate mental health treatment violates their constitutional rights for another reason. When the state removes a child from the parent's control and custody, it must ensure the conditions of custody are reasonably related to the purposes for which the state

assumed custody⁴⁶. One of the primary purposes for which the juvenile courts remove children from home and commit them to defendants' custody is to secure for them protection from further harm. In their most recent *Foster Care Improvement Plan*, defendants state that "[o]ne of the most important jobs of the public child welfare system in Washington State is to protect and care for its most vulnerable citizens, the abused, neglected and abandoned children."⁴⁷ When the defendants' practices are shown – as they are in this case by both the deprivation of appropriate mental health treatment and the shuttling of children from one placement to another – to harm the child's psychological development, they violate the constitutionally required level of care imposed upon defendants.

In determining whether or not the constitutional rights of the plaintiff class were violated, there must be a showing that defendants' practices are a substantial departure from accepted professional judgment, standards, or practice.⁴⁸ The testimony of several witnesses, including one of defendants' high-ranking regional administrators, confirmed numerous instances in which there are substantial departures from professional standards. The following areas are some of those in which such departures were shown: compelling children to sleep in DSHS offices; placing sexually aggressive or violent youth in homes with other vulnerable children; placing youth with severe behavior problems with foster parents unable to care for them; separation of siblings; failing to provide foster parents with sufficient information about the child being placed in their home and giving them a passport for the child; failing to assess the health care needs of children upon entering care; and failing to follow the placement and/or treatment recommendations of the child's

⁴⁴ *Sharp v. Weston*, 233 F.3d 1166 (9th Cir. 2000).

⁴⁵ *Youngberg v. Romeo*, 457 U.S. at 321-322 (1982).

⁴⁶ *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Doe by Johanns v. New York City Dept Social Servs.*, 670 F. Supp. 1145, 1174-1176 (S.D.N.Y. 1987).

⁴⁷ (*Building a Future for Washington's Children: Foster Care Improvement Plan*, May 5, 2001, p. 11).

⁴⁸ *Youngberg v. Romeo* 457 U.S. 307 (1982).

mental health provider. This testimony and other evidence summarized below provided the jury with a substantial basis for their verdict in this matter.

Proposed Injunctive Relief

Following the jury's decision, state officials made clear that they would appeal the verdict. Secretary Braddock sent a memorandum to Children's Administration staff in which he repeatedly pledged to "resist this judge's attempts" to reform the system, "resist this decision," and "resist this case."⁴⁹

In the same E-mail, Braddock complained about the Court's "irregularities," and "bias," adding that the Court and plaintiffs' counsel "labored imaginatively to paint Rosie [Assistant Secretary Oreskovich] as Sheriff "Bull" Connor and me as Arkansas Governor Orval Faubus at the school house door preventing school integration."⁵⁰

In a press release issued about the same time, the Department claimed the practices that the jury found unconstitutional and harmful were practices of *prior* administrations stating:

Jury instructions neither allowed jurors to focus on recent improvements in the child welfare system nor to consider budgetary constraints when making their decision.

In fact, the jury was presented with the details of the Kids Come First Initiative much of which had not been fully

implemented at the time of trial. Braddock and Oreskovich referred to the Children Administration's 2000 Performance Report, and numerous graphs were shown to the jury to illustrate alleged recent improvements. Kidscreen, a program implemented just weeks before the trial was also part of defendants' case.⁵¹ Most of the final hour of defense counsel's closing argument was devoted to recent improvements.

Whether or not jurors should be permitted to excuse defendants' unconstitutional practices if they found that DSHS was prevented from complying due to inadequate funding was the subject of several hearings before the judge. Judge Nichols ruled that inadequate funding was not a defense to unconstitutional practices since in the case before the jury no damages were being sought from individual caseworkers or administrators.⁵²

On January 31, 2002, plaintiffs submitted a proposal to Judge Nichols in which they set forth the provisions of an injunction. The proposed injunction addresses each of the five harmful practices evidenced by the testimony and exhibits presented at trial. Before submitting the draft injunction, plaintiffs' counsel consulted with advocates and providers. They also took into consideration that:

- many of the systemic deficiencies affecting the care of foster children have persisted for years,
- some are more susceptible to quick resolution than others, and
- others place class members at such great risk of harm that the status quo can no longer be tolerated.

⁴⁹ Plaintiffs' attorneys heard about the memo from media and obtained a copy of it through a Public Records Disclosure Request.

⁵⁰ Theophilus Eugene "Bull" Connor, a Birmingham, Ala. city official, became a symbol of police brutality against the Civil Rights movement after he turned fire hoses and dogs on protesters during a rally in May 1963. Orval Faubus was governor of Arkansas during attempts to integrate the all-white Central High School in Little Rock. In addition to calling out the National Guard to surround the school, he was quoted as saying that, "blood would run in the streets" if black students attempted to enter.

⁵¹ Plaintiffs had moved to exclude such testimony but the Court allowed the jury to hear evidence of the Department's plans as long as the funding for it was in the pipeline.

⁵² *Youngberg v. Romeo*, 102 S.Ct. 2452, 2462 (1982); *Turay v. Selig*, 108 F.Supp. 2d 11498, 1151 (W.D.Wash. 2000); *Doe v. New York City Dep't of Social Servs*, 670 F. Supp. 1145, 1184 (S.D. N.Y. 1987).

Consequently, the proposed order calls for some changes to be made more quickly than others.

There appears to be considerable agreement concerning modifications in practice that are designed to reduce placement breakdowns, promote increased stability, and thereby improve the physical and mental health of the class members. These include, among other things, improved training of foster care providers; increased use of relative caregivers; provision of regular and easily accessible respite care; more frequent visits, contacts, and support from caseworkers; full and continuing disclosure/sharing of information about children with their care providers; early and comprehensive assessments of children upon entry into care and periodic reassessments; and the timely provision of health care, including mental health services which are reasonably expected to improve the child's mental/emotional status. Each of these is addressed in the order submitted to Judge Nichols.

Plaintiffs also point out that numerous task forces, committees, advisory panels, and other groups that had analyzed the systemic deficiencies in the state's foster care system during the last two decades developed similar litanies of reform. The recommendations of those past panels of experts as well as DSHS' most recent Foster Care Improvement Plan were drawn upon in devising the remedial order. In addition, the suggested remedies are consistent with professional standards of organizations such as the Child Welfare League of America and the American Academy of Pediatrics.

Based on the jury's verdict, the children are asking that the judge order DSHS to do the following to remedy the five harmful practices identified at trial:

- Increase in foster homes and stable school placements – DSHS must substantially increase the number of foster homes – especially therapeutic foster homes that are qualified to care for children with emotional and behavioral problems.

Children are to be maintained in their home schools and the agency is to collaborate with school districts to meet the special needs of foster children and decrease changes in school placements.

- Training and Support to Foster Parents – DSHS is directed to provide respite care, disclose all information (including the DSHS file) about the child's problems and needs to the foster parent, increase the number of children in kinship placements, make face to face visits to the foster home every 30 days, and provide a training program for foster parents similar to the Oregon Social Learning Center model.
- Mental Health Assessments and Treatment – A comprehensive assessment of the child's mental health must be completed and recommended treatment provided in accordance with professional standards, including the CWLA standards, National Crime Victims Research and Treatment Center *Guidelines*, and the Bazelon Center for Mental Health Law *Principles for the Delivery for Children's Mental Health Services*.
- Unsafe and Inappropriate Placements – DSHS is barred from using offices, detention centers, and homes in which sexually assaultive or violent persons, including youth, reside.
- Sibling Placements – Siblings are to be placed together unless one poses a danger to the other or unless the juvenile court, upon petition by DSHS finds that it is in the best interests of the child to be separated from sibling(s).

In a letter issued on January 24, 2002,
Judge Nichols noted:

The trial has had one very salutary outcome: the long-term foster care system has been thoroughly exposed for what it is and what it is not. There is no mystery about what the problems are. There is no mystery about what the State is trying to do to alleviate those problems. There is also no mystery that the misery of many of these children is being compounded as they live out their years in foster care.

He indicated his intention to consult with interested parties and stakeholders before deciding what remedial order should be entered. The Court is scheduled to hear argument on plaintiffs' proposed injunction in late March.

Bill Grimm, counsel for plaintiffs in Braam v. State of Washington, is a senior attorney at the National Center for Youth Law, specializing in Child Welfare.