

Youth Law News

Journal of the **National Center for Youth Law**



Vol. XXVII No. 2

APR-JUN
2006

Braam v. State of Washington: A Blueprint for Child Welfare Reform

By Bryn Martyna

Two years ago, in the early hours of July 31, 2004, parties in *Braam v. State of Washington* reached an historic settlement, creating a blueprint for reform of the child welfare system in that state.¹ The agreement's hallmark is an independent, five-member oversight panel of national child-welfare experts to develop and monitor reform during the seven-year settlement period. Panel members have a particularly broad range of experience and expertise.

Two of the Washington panel's key tasks are developing benchmarks to measure the state's progress in bringing about tangible change in the lives of foster children, and establishing "professional standards" for the state to follow. The court retains jurisdiction over the case if reform doesn't occur and a provision of the settlement empowers it to order state expenditures to enforce the agreement.

Emotional, Psychological Harm

The road to agreement between the parties began in 1998 when a private attorney, Tim Farris, in Bellingham, Wash., brought suit in Whatcom County against Washington State, the state Department of Social and Health Services (DSHS), and the Secretary of DSHS on behalf of 13 foster children. The National Center for Youth Law and Columbia Legal Services of Seattle later joined the case as co-counsel.

The case later grew to include a class of more than 3,000 of

the roughly 10,000 foster children in Washington, focusing on those who had experienced multiple placements while in the state's custody and on the attendant harms of placement instability. The suit alleged that multiple placements and other practices of the state's child welfare system were causing foster children emotional and psychological harm and violating their constitutional rights.

After a trial in Whatcom County in late 2001, the jury reached a verdict in favor of the plaintiffs, finding that the foster children's constitutional rights had been violated. The case eventually went up to the Supreme Court of Washington on appeal.

Conditions "Free of Unreasonable Risk"

In December 2003, the Supreme Court of Washington upheld the foster children's constitutional rights, but sent the case back for retrial because of an error in jury instructions.² In its landmark decision, the court held that "...foster children have a substantive due process right to be free from unreasonable risk of harm, including a risk flowing from the lack of basic services and right to reasonable safety."³ It explained the state's obligations to care for foster children: "To be reasonably safe, the State, as custodian and caretaker of foster children, must provide conditions free of unreasonable

WEBSITES FOR MORE INFORMATION ON BRAAM V. STATE OF WASHINGTON:

National Center for Youth Law:
www.youthlaw.org

Braam Oversight Panel:
www.wsipp.wa.gov/braampanel

Braam Kids website,
hosted by Plaintiffs' attorneys:
www.braamkids.org

Washington State Department
of Children and Family Services
website on Braam Settlement:
[www.dshs.wa.gov/ca/about/
imp_settlement.asp](http://www.dshs.wa.gov/ca/about/imp_settlement.asp)

BRAAM OVERSIGHT PANEL MEMBERS¹

John A. Landsverk, Chair
Director, Child and Adolescent Services
Research Center, Children's Hospital,
San Diego, CA

Jeanine Long
Washington State Senator, 1994-2003

Jan McCarthy
Director, Child Welfare Policy, National
Technical Assistance Center for Children's
Mental Health, Georgetown University
Center for Child and Human Development

Jess McDonald
Clinical Professor, School of Social Work,
University of Illinois, Urbana-Champaign

Dorothy Roberts
Kirkland and Ellis Professor,
Northwestern University School of Law

¹ More detailed description, see article, *Braam v. State of Washington: A Blueprint for Child Welfare Reform*, p. 1.

¹ See Bill Grimm, *State Supreme Court in Washington Recognizes Constitutional Rights of Foster Children*, Youth Law News, January-March 2004, 1-11; Bill Grimm, *Jury Finds Washington Foster Care System Unconstitutional*, Youth Law News, January-February 2002, 1-12.

² *Braam ex rel Braam v. State of Washington*, 81 P.3d 851 (Wash. 2003); Clearinghouse Review No. 54493.

³ *Braam*, 81 P.3d at 857.

risk of danger, harm, or pain, and must include adequate services to meet the basic needs of the child.”⁴

The retrial was scheduled to begin in September 2004, but the trial court judge ordered the two sides to mediate. This produced a settlement agreement the parties signed on July 31, 2004, and the court officially approved in November 2004.

The agreement requires that the state—working with an independent oversight panel of experts and with input from stakeholders, including counsel for plaintiffs—make reforms in all of the major areas the lawsuit cited. These six areas are placement stability, mental health, safe and appropriate placements, foster parent training and information, sibling placement, and services to adolescents. The agreement contains goals, desired outcomes, and action steps regarding each area, supplemented by the oversight panel’s own benchmarks and action steps. It also specifies the panel’s various duties and how the agreement is to be enforced. The agreement will terminate in 2011 unless an enforcement action is pending.⁵

Oversight Panel

Formed in December 2004, the oversight panel is responsible for developing a detailed implementation plan for reforms, establishing professional practice standards, and monitoring progress over the life of the seven-year agreement. According to terms of the settlement, both parties had to agree on the selection of panel members, who were to include a public child-welfare administrator, a child welfare researcher, a children’s mental health expert, and two “at-large” members.

To ensure the panel’s complete independence, it does not receive any state funds.⁶ This is an important feature; many settlement agreements in other jurisdictions have lacked thorough, built-in, independent monitoring. A full-time staff person coordinates

panel activities, which include at least quarterly public meetings, issuing monitoring reports every six months, and receiving input from the plaintiffs, DSHS, and any other interested parties.⁷

The five panel members have years of high-quality, diverse experience at all levels of the child welfare system, as well as a national perspective on child welfare reform. Its expertise and the members’ vigilance thus far offer great hope that the promise of reform in *Braam* will become a reality.

John Landsverk, a nationally known researcher on improving the care of children in child welfare systems, and director of two research centers in San Diego, chairs the panel. The mental health expert is Jan McCarthy, who began her career as a caseworker. McCarthy is a national leader in addressing issues related to community-based, child-welfare systems of care and strengthening collaboration between child-welfare and mental-health systems. Jess McDonald fills the child-welfare administrator position. He is former director of the Illinois Department of Children and Family Services, and a clinical professor of social work. The two at-large members are Jeanine Long, a former Washington State senator, and Dorothy Roberts, a professor and researcher who studies the intersection between child welfare and race and poverty.⁸ The panel and its staff person have demonstrated a very high level of commitment to their many responsibilities, and have proven that they expect the state to follow through on its obligations under the settlement agreement.

A Course of Action

The panel’s first task was to establish benchmarks and desired outcomes, and to come up with additional action steps in the six major categories of child welfare issues. The settlement agreement required that it address mental health and adolescent services within the first

six months, and placement stability, safe and appropriate placements, foster parent training and information, and sibling placement within a year. For each category, the agreement set overarching goals and specific action steps, many drawn from Kids Come First II, a plan already in place at DSHS to improve Washington’s child welfare system.

Goals in the settlement agreement are broad. The main one for placement stability is that “each child in the custody of the Department shall have a safe and stable placement with a caregiver capable of meeting the child’s needs.”⁹ Outcomes are somewhat narrower; they “identify specific, required results that will advance the child welfare system towards a stated goal.” The purpose of benchmarks is “to provide a measure to enable the Panel to monitor the progress of the Department in meeting the specific outcome identified.”¹⁰

“Measurable Expectations”

Benchmarks are specific percentage increases or decreases from a baseline of current performance, based on data from fiscal year 2005. They “set interim targets toward the achievement of the specified outcomes” and “provide measurable expectations for implementation.”¹¹ For example, a desired outcome of the above-mentioned goal for placement stability is that “the percentage of children in custody for at least 30 days who experience three or more placements will be significantly reduced.” The corresponding benchmark requires a 10 percent decrease each year from the 2005 baseline in the number of children with three or more placements.¹²

Finally, the action steps are specific tasks DSHS must complete in order to achieve the targeted improvements for foster children. One of the 14 action steps for placement stability requires the Department to develop and

4 *Id.*

5 *Braam v. State of Washington* Final Settlement Agreement, July 31, 2004, at 15. The agreement can also be terminated if the parties agree. It will be terminated automatically if all outcomes have been achieved and sustained for two years.

6 A grant from Casey Family Programs pays for the panel’s activities and staff.

7 Roxanne Lieb was the staff person, from the panel’s inception until July 2006. A new staff person, Carrie Whitaker, is taking over Lieb’s position.

8 More complete biographies are available at the panel’s website: www.wsipp.wa.gov/braampanel/members.asp

9 *Braam v. State of Washington* Final Settlement Agreement, July 31, 2004, at 6.

10 *Id.* at 4.

11 *Id.*

12 Implementation Plan, February 3, 2006, at 11.

implement concrete strategies to increase appropriate matching of children and caregivers.

Under the settlement agreement, the Department is responsible not only for completing the action steps within a defined time period, but also for meeting the benchmarks that measure whether the lives of foster children throughout the state actually improve. For example, if the percentage of children experiencing three or more placements while in care does not decrease, DSHS will be held accountable—one of the features that makes the reform process in *Braam* particularly notable.

Panel Solicits Broad Input

The oversight panel's first few meetings focused on developing the outcomes, benchmarks, and action steps. All meetings were open to the public. Among attendees were numerous child welfare advocates, service providers, state employees, foster parents, attorneys for the plaintiff foster children, and attorneys for and representatives of DSHS. All members of the public were free to share their opinions and ideas with the panel. Comments from foster parents and anecdotes from service providers about individual foster youth were the most compelling testimony.

Throughout this process, attorneys for the plaintiffs and for DSHS have exchanged countless letters with the panel, advocating inclusion or exclusion of certain outcomes, benchmarks, and action steps. Child advocacy groups—among them, the Mockingbird Society, Treehouse for Kids, and the Children's Alliance—also provided written input. The process culminated in a 91-page implementation plan, released in February 2006.¹³

An Associated Press story about the plan appeared in a number of Seattle newspapers, highlighting its significance and emphasizing the need

for increased funding “to meet the requirements of a new road map for improving Washington’s foster-care system.”¹⁴

Court Ruling Spurs Professional Standards

One particularly innovative aspect of the *Braam* settlement is the oversight panel's charge to develop professional standards, defined as “a standard of practice for child welfare agencies that establishes clear expectations for the treatment of children in the foster care system.”¹⁵ Plaintiffs’ attorneys and DSHS have exchanged, and shared with the oversight panel, extensive correspondence about what the content and scope of these standards should be. The panel discussed standards at its public meetings in March and last month and is expected to release its standards sometime this fall.

The significance of the professional standards derives from the language and logic of the Supreme Court of Washington’s decision in *Braam*. The court held that in determining whether the state violated the constitutional rights of foster children, the proper question is “whether the state’s conduct falls substantially short of the exercise of professional judgment, standards, or practices.”¹⁶

The settlement agreement provides for two types of enforcement actions. One can occur if DSHS asserts that it cannot implement the mandated reforms because it lacks necessary funding. The second can occur if the Department fails to implement prescribed reforms.

This is where professional standards come into play. If the Department asserts lack of funding, plaintiffs may immediately initiate an enforcement action in court. If the court finds that the state is failing to provide constitutionally adequate care—in other words, that it is substantially departing from

professional standards—the court can order the expenditure of state funds to enforce the foster children’s right to such care. The standards applied would be those the oversight panel has established.

It remains to be seen how specific the panel’s standards will be and, in the event of an enforcement action, how they would apply in court.

State Fails to Complete Most Action Steps

The panel’s main function during the seven years of the settlement agreement will be monitoring progress by DSHS toward completing the action steps and meeting the benchmarks. It will publicly issue a progress report every six months.

The first report, which received considerable media attention in Washington State when it was released on March 28, 2006, found that the Department had not completed 32 of 45 action steps that it was required to complete during the first monitoring period. Among other things, the Department had failed to ensure that mental health professionals periodically reassess the mental health needs of foster children and that there be multidisciplinary case staffings for children who have been in four or more placements.

These two action steps address key concerns in the original lawsuit. The named plaintiff, Jessica Braam, encountered more than 34 placements and a lack of necessary services while she was in the custody of DSHS. The purpose of the action steps is to ensure that other foster children do not have similar experiences.

The oversight panel’s March 2006 report was, according to the *Seattle Times*, “the first indication of the state’s commitment to dramatically overhaul the way it deals with foster children.”¹⁷

13 The plan is available at the panel’s website: www.wsipp.wa.gov/braampanel/members.asp.

14 Curt Woodward, *Report: Foster Care Needs More Funding*, *Seattle Times*, Feb. 5, 2006.

15 *Braam v. State of Washington* Final Settlement Agreement, July 31, 2004, at 2.

17 Maureen O’Hagan and Jonathan Martin, *State Misses Foster Care Goals*, *Seattle Times*, March 29, 2006.

16 *Braam*, 81 P.3d at 858.

Panel Rejects Compliance Plan

After the report was released, DSHS had 30 days under the settlement agreement to propose a compliance plan. The oversight panel rejected the Department's proposed plan on June 22, 2006, and gave it 21 days to submit a revised one, which it did on July 14, 2006.

Among key action steps the panel addressed in rejecting the proposed compliance plan are caseworker visits to foster children every 30 days and devising a way to meet case-load standards set by the national Council on Accreditation. In a cover letter accompanying its proposed plan, DSHS called these action steps "overly ambitious" and "fundamentally flawed."¹⁸ The oversight panel demonstrated its unwillingness to relieve the Department of obligations it assumed when it signed the settlement agreement, noting that "[a]ny item that was 'fundamentally flawed' should have been identifiable as such when the Settlement was reached."¹⁹ In response to the Department's concerns about the limitations of collecting administrative data, the panel said this "cannot be used as a reason to ignore important commitments."²⁰

The settlement agreement contains some groundbreaking elements that could potentially make Washington a model for other states attempting similar reforms. However, that remains to be seen over the next six years of the implementation process. The panel will be in place until 2011.

Bryn Martyna is a Skadden Fellow at NCYL, working on implementation of the Braam settlement.

¹⁸ Panel Decisions on Children's Administration Proposed Compliance Plan, June 22, 2006, at 67.

¹⁹ *Id.* at 1.

²⁰ *Id.* at 2.