

**BRAAM v. STATE OF WASHINGTON**

**FINAL SETTLEMENT**

**I. INTRODUCTION AND GENERAL AGREEMENTS**

1. This Settlement Agreement is entered into in recognition of the following:
  - Plaintiffs have filed a lawsuit in the matter of *Braam v. State of Washington*.
  - The parties seek to resolve the issues and claims set forth in the complaint by the execution of this Agreement. The parties enter into this Agreement with the recognition that both parties and their counsel have committed to enter into specific, measurable and enforceable agreements with the goal of improving the conditions and treatment of children in the custody of the Division of Children and Family Services (“DCFS”) of the State of Washington’s Department of Social and Health Services (the “Department”), as to the conditions and treatment of children in the Plaintiff class.

Therefore, the parties agree as follows:

2. The parties agree that the Department’s Kids Come First Phase II (KCF II) is the State’s comprehensive plan to improve child welfare practice, including the six general areas that are the subject of the complaint filed by the Plaintiffs. The Department agrees to improve the treatment and condition of children in the Plaintiff class by making specific, measurable and enforceable commitments as set forth herein. The Department further agrees to modify KCF II to include the Goals, Outcomes, Benchmarks and Action Steps identified in this Agreement within 30 days of the signing of the Agreement and to make additional modifications to the KCF II in accordance with Section III.5.g of this Agreement. The parties acknowledge that nothing in this Agreement constitutes Plaintiffs’ endorsement of the entire KCF II Plan, and also that only the sections of KCF II that are included in this Agreement are subject to this Agreement’s enforcement provisions under Section V, herein.
3. The parties agree to create an independent Panel of experts from different disciplines with authority to establish Professional Standards, Outcomes, Benchmarks and Action Steps to improve the treatment of and conditions for children in the custody of DCFS and to monitor the Department’s performance under this Agreement. The parties agree that the Panel is being created to assist the parties in achieving the goals of this Settlement as described herein, but not to supplant the day-to-day management and leadership responsibilities and authority of the Department.
4. The parties agree that additional financial resources will be necessary to comply with some of the provisions of these agreements. The parties agree to make all reasonable efforts to obtain funding for implementation, including but not limited to, the Department’s obligation to prepare line item budget requests and support and advocate for sufficient appropriations.

5. The values of shared decision-making and information sharing between public and private partners in the child welfare system are reflected throughout the KCF II. This Agreement shall be interpreted consistent with those values.

## **II. DEFINITIONS**

1. “Action Steps” are actions that the Department will undertake to reach outcomes and benchmarks in the six general areas that are the subject of this Agreement.
2. “Benchmark” is a measure for evaluating compliance with specific action steps identified in this Agreement or required by the Oversight Panel as set forth in Section III of this Agreement, to be implemented or completed by specific dates or within specific time periods in order to achieve identified Outcomes.
3. A child “in the custody of the Division of Child and Family Services (DCFS)” means a child whose custody has been placed in the Department of Social and Health Services, DCFS, by court order in a dependency or termination action under RCW 13.34 or by voluntary placement agreement between DCFS and the child’s parent or guardian. A child “in the custody of DCFS” includes a child in DCFS custody placed with an unlicensed relative.
4. “Department” means the State of Washington Department of Social and Health Services.
5. “Juvenile court” means the Juvenile Division of Washington State Superior Court, presiding over a dependency proceeding pursuant to RCW 13.34.
6. “Children’s mental health” includes inpatient and outpatient services to meet the emotional and behavioral needs of children, including screening, assessment, diagnosis, and treatment by social workers and mental health professionals.
7. “Outcome” means a specific and measurable result based on Professional Standards that (a) is expected to follow from the completion of certain action steps set forth in KCF II in accordance with this Agreement, and (b) is a step toward achieving one or more of the goals identified in this Agreement.
8. “Professional Standard” means a standard of practice for child welfare agencies that establishes clear expectations for the treatment of children in the foster care system. “Professional Standards” related to the areas in this Agreement will be established by the Oversight Panel after consideration of federal and state law and taking into account recommended standards of national organizations (e.g., CWLA, COA and the AAP) that have set standards related to the care and treatment of children in the public child welfare system.
9. “Placement” means any home or facility, whether public or private, in which the child is placed by DCFS while in the custody of DCFS regardless of the length of time the child remains in that home or facility. Respite care and short-term interruptions such as hospital stays shall not be included. Placement means any home and/or facility the State

is mandated to include under its reporting responsibilities pursuant to 42 U.S.C. §679, 45 C.F.R. 1355.407, Appendices A & B, and the Child Welfare Policy Manual.

10. "Plaintiff Class" means all children in the custody of DCFS who are now or in the future will be placed by DCFS in three or more placements and those children in the custody of DCFS who are at risk of three or more placements.

### **III. OVERSIGHT PANEL**

1. The parties agree that an independent Oversight Panel (the "Panel") will be formed which will have the following *general* responsibilities:
  - In collaboration with the Department, and with substantial input from Plaintiffs, and other stakeholders as necessary, develop outcomes and benchmarks in each of the six areas listed in Section IV;
  - In collaboration with the Department, and with substantial input from Plaintiffs, and other stakeholders as necessary, establish the Professional Standards to be applied in each of the six areas listed in Section IV;
  - Monitor compliance and make Findings with respect to the outcomes, benchmarks and action steps;
  - Issue semi-annual public reports on the Department's compliance with the provisions of this Agreement; and
  - Provide advice and technical assistance to the Department in working toward the goals set forth below.
2. The Panel will be composed of five members to be mutually agreed upon by the parties. The membership of the Panel will include at minimum (1) a former public child welfare administrator, (2) a child welfare researcher, (3) an expert in children's mental health, and two additional members. By August 30, 2004, the parties will exchange recommendations for members of the Panel. Each party can identify up to seven candidates. If the parties cannot agree on final Panel composition, within seven days, they will submit the names to the mediators who, in collaboration with the parties, will interview candidates, hold a two-hour mediation on Panel selection and if necessary, select Panel members. In the event that a Panel member can no longer serve on the Panel during the term of this Agreement, the Panel, in collaboration with the parties, shall select a replacement.
3. In carrying out all of its general and specific duties, the Panel shall make independent decisions based on professional judgment and guided by knowledge of effective practice and an understanding of the public child welfare system in the State of Washington. The Panel shall also meet and confer with the Department, Plaintiffs, and other stakeholders as necessary, to carry out its responsibilities.

4. The Panel may shorten or extend the time for any of the responsibilities it is required to perform under this Agreement, however, no extension shall exceed 30 days without the consent of the parties. The Panel may not extend the term of this Agreement.
5. The Panel will have the following *specific* duties:
  - a. **Establish Outcomes and Benchmarks:** Within one year of being formed, the Panel, in collaboration with the Department and with substantial input from the Plaintiffs, and other stakeholders as necessary, will establish outcomes and benchmarks in each of the six practice areas listed in Section IV, except for the areas of mental health and adolescent services as described in Section III.5.b, below. The outcomes will be related to the claims listed by Plaintiffs in Section II, Paragraph 2.3 of the Fifth Amended Complaint filed in *Braam v. State of Washington*. The purpose of the outcomes is to identify specific, required results that will advance the child welfare system toward a stated goal. The purpose of the benchmarks will be to provide a measure to enable the Panel to monitor the progress of the Department in meeting the specific outcome identified. The benchmarks will set interim targets toward the achievement of the specified outcomes within the timeframes identified in this Agreement or by the Panel and also will provide annual benchmarks and measurable expectations for implementation.
  - b. **Establish Certain Outcomes, Benchmarks and Action Steps:** Within six months of being formed, the Panel, in collaboration with the Department and with substantial input from the Plaintiffs, and other stakeholders as necessary, will establish Outcomes, Benchmarks and Action Steps required to achieve the identified goals in the areas of Mental Health Services and Adolescent Services as identified in Section II, Paragraph 2.3 of the Plaintiff's Fifth Amended Complaint. These Outcomes, Benchmarks and Action Steps will be incorporated into the KCF II and will be enforceable under this Agreement.
  - c. **Establish Professional Standards:** Within one year of being formed, the Panel, in collaboration with the Department and with substantial input from the Plaintiffs, and other stakeholders as necessary, will establish the Professional Standards that the parties agree will be the Professional Standards used in any enforcement proceeding under Section V, herein.
  - d. **Meetings:** The Panel will meet a minimum of quarterly, or as it deems necessary, to fulfill its general and specific responsibilities under this Agreement.
  - e. **Monitor Compliance:** The Panel will monitor the Department's compliance with the specific Outcomes, Benchmarks and Action Steps identified in this Agreement, or as part of its implementation, in the six areas listed in Section IV, and incorporated into the KCF II. If the Panel finds the Department is in compliance with the outcomes and benchmarks in one of the six areas for two consecutive years, that area will be removed from active monitoring by the Panel. However, for the duration of the term of this Agreement, the Plaintiffs or the Panel can renew the monitoring obligation in such an area, by demonstrating non-compliance.

- f. **Findings and Reports:** The Panel will prepare and publish a report to the public and to the parties every six months on the Department's progress and including specific Findings on the Department's compliance with the provisions of this Agreement. The Department shall maintain and provide the Panel with sufficient information to accurately track the Department's compliance with the Outcomes, Benchmarks and Action Steps in this Agreement.
  - g. **Modify/Augment Outcomes, Benchmarks, and Action Steps:** In order to achieve the goals of this Agreement, the Panel may modify or augment the Outcomes, Benchmarks, or Action Steps at the request of the Department or Plaintiffs, or on its own initiative, in collaboration with the Department, and with substantial input from the Plaintiffs, and other stakeholders as necessary.
    - i. *Provided:* With the exception of the issues of mental health and adolescents as described in Section II, Paragraph 2.3 of the Plaintiffs' Fifth Amended Complaint, no modifications will be made to the Outcomes, Benchmarks or Action Steps set forth in this Agreement or developed under this Paragraph until 15 months after the effective date of this Agreement.
    - ii. After this Agreement has been in effect for 15 months, the Panel has authority to modify or augment the KCF II provisions setting forth the Outcomes, Benchmarks and Action Steps set forth in or, developed as a result of this Agreement in order to achieve the Goals established in Section IV of this Agreement. Any such revision will be made only after consultation with the Department and the Plaintiffs, as described herein.
    - iii. After establishing the Professional Standards, as set forth in Paragraph 5.c, the Panel, in collaboration with the Department and with substantial input from the Plaintiffs, and other stakeholders as necessary, may modify the KCF II provisions relating to the six areas listed below, if necessary to achieve compliance with the Outcomes, Benchmarks and Action Steps agreed upon by the parties in this Agreement or developed as part of the implementation of this Agreement.
  - h. **Participate in Enforcement:** The Panel will participate in the enforcement of this Agreement, as set forth in Part V, below.
- 6. The Panel will comply with the Open Public Meetings Act, the Public Disclosure Act and all applicable confidentiality statutes and regulations.
  - 7. In order to allow the Panel to carry out its duties, the Department shall reimburse the Panel for time and expenses spent serving on the Panel. The Department will provide sufficient resources for the Panel to hire staff, not to be less than one full time staff person chosen by the Panel.
  - 8. The Panel and its staff shall have access to all data and information necessary to carry out its duties. If the Panel finds that in order to determine the level of the Department's compliance with the Agreement, additional data and information are needed, it and its

staff shall have access to paper and electronic data and information (including case files), DSHS staff, foster parents, foster children, and other individuals with relevant information.

#### **IV. GOALS, OUTCOMES, BENCHMARKS AND ACTION STEPS**

The parties agree that KCF II includes or will be supplemented with goals, outcomes, benchmarks and action steps in the six areas described in this section (i.e., Section IV. 1-6). The version of KCF II that the parties agree will be supplemented is attached as Appendix A, and is incorporated by reference into this Agreement, where applicable. In subsections 1 through 6 below, the Action Steps currently in KCF II and which are incorporated into this Agreement, are identified; a parenthetical after each of the current Action Steps cites the applicable section of KCF II. Where a date is cited, such date will amend or supplement any date(s) in KCF II; where no date is cited, the date(s) in KCF II will apply. For those Additional Action Steps where implementation dates have not been specified herein, they will be developed by the State, with review and approval by the Panel.

##### **1. Placement Stability**

###### ***A. Goal:***

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.

###### ***B. Outcomes and Benchmarks:***

To be developed according to the provisions of Section III, Paragraphs 5.a, b, c and g.

###### ***C. Action Steps:***

Currently included in KCF II –

1. RFP for statewide foster parent recruitment (Section 24.1.1)
2. Require multi-disciplinary case staffings for children in four or more placements (Section 6.1.1)
3. Implement strategies to increase appropriate matching between children and caregivers at time of initial placement (Section 6.2.4, beginning in December 2004 and fully implemented by June 2007)
4. Develop and implement policy to provide emergency respite to licensed foster care and relative caregivers to prevent disruption (Section 6.1.2(a))
5. Complete implementation plan for 2003 legislation to increase educational stability of foster children (HB 1058). Complete and implement agreements with school districts, addressing transportation issues for children transferring schools upon placement or move between placements (Section 15.1.4)
6. Increase the appropriate use of kinship care (Sections 20.1.1 – 21.1.2)

7. Revise and implement policy and procedure to provide for the involvement of children and parents in assessments, development of case plans and major decisions (including changes in placement) (Section 13.1.1.)

Additional action steps to be incorporated into KCF II –

8. Develop and implement annual local office and/or regional, plans for the recruitment and retention of foster homes that specifically assess the need for and availability of placement for children with special needs, and for respite (especially for adolescents). Such plans shall specify the recruitment activities targeted at increasing the number of such homes. The plans shall contain numerical targets for increases each year in the number of homes in the special populations of children listed above, beginning in July 2005 until the target identified in the plans is met.
9. Develop a plan by June 30, 2005 for Panel review and approval to reduce caseloads to COA standards.
10. Notify child's representative (attorney/GAL/CASA) prior to placement move, except in emergencies. When a move has been made based on an emergency, the child's representative will be notified on the next business day.
11. A history of the child's placements will be reported to the Juvenile Court at each dependency review hearing as part of the child's Individual Safety and Service Plan (ISSP).
12. Consistent with the outcomes and benchmarks in Section IV.2, develop and begin to implement pilot programs in at least 3 sites providing therapeutic foster care using effective, evidence-based models of care for children with emotional and behavioral challenges. (By June 2005 develop RFP, award contracts and begin implementation of pilot projects)
13. Implement strategies to increase appropriate matching between children and caregivers for children who need to be replaced. (Beginning by December 2006 and fully implemented by June 2008)
14. Develop a plan for Panel review and approval, with input from Plaintiffs, to provide multidisciplinary and/or case staffings for children in 3 or more placements. (Plan developed by January 15, 2005)

## **2. Mental Health**

### **A. *Goals:***

1. The children in the custody of DCFS shall have an initial physical and mental health screening within 30 days of entry into care.
2. Plans to meet the special needs of children in the custody of DCFS will be included in the child's ISSP.

3. Children in the custody of DCFS shall receive timely, accessible, individualized and appropriate mental health assessments and treatment by qualified mental health professionals consistent with the child's best interest.
4. Continuity of treatment providers will be maintained, except when it is not in the best interest of the child.

**B. *Outcomes and Benchmarks:***

To be developed according to the provisions of Section III, Paragraphs 5.a, b, c and g.

**C. *Action Steps:***

Currently included in KCF II –

1. Improve availability and utilization of regional medical consultants (Section 16.1.4)
2. Increase utilization of “No Wrong Door” staffings to identify needs for family and connect to services and resources (Section 16.1.5)
3. In collaboration with community partners, utilizing Pre-Passport and Passport profiles or any successor model, identify regional services gaps and create plans to fill gaps through maximizing and developing local resources (Section 17.1.2)
4. Implement newly developed agreements with Regional Support Networks in each region (Section 17.1.4)

Additional Action Steps to be incorporated into KCF II –

5. Foster children's mental health needs will be periodically reassessed by mental health professionals, as indicated in their EPSDT or other relevant evaluation.
6. The Department will develop and encourage Juvenile Court Judges to use a checklist for each review which prompts the Court to seek information on whether or not the physical and mental health and education needs of dependent children are being met.

Additional Outcomes, Benchmarks and Action steps to achieve this goal will be developed and added to the KCF II Plan as outlined in Section III, 5.b of this Agreement, with consideration of the recommendations of the Children's Mental Health Workgroup, if appropriate, and including, Outcomes, Benchmarks and Action Steps related to the Department's redesigned Pre-Passport and Passport programs.

### **3. Foster Parent Training and Information**

#### ***A. Goals:***

1. Caregivers shall be adequately trained, supported and informed about children for whom they provide care so that the caregivers are capable of meeting their responsibilities for providing for the children in their care.
2. The Department shall offer and provide accessible pre-service and in-service training to all caregivers sufficient to meet the caregiving needs of children in placement.

#### ***B. Outcomes and Benchmarks:***

To be developed according to the provisions of Section III, Paragraphs 5.a, b, c and g.

#### ***C. Action Steps:***

Currently included in KCF II –

1. Implement statewide after-hours crisis support line for foster parents and other caregivers (Section 6.2.1)
2. Develop and implement cross-training between foster parents and staff (Section 22.1.2)
3. Require written notification to licensed foster parents and relative caregivers and provide support to increase their participation in meetings, staffings and hearings involving planning for children in their care (Section 22.1.3)
4. Implement RFP for providing statewide crisis support and other immediate support for licensed foster parents and relative caregivers (Section 23.1.2)
5. Provide training for licensed foster parents and relative caregivers on policy revisions and engaging families and children (Section 13.1.1)
6. DLR licensors develop and implement annual assessment and development plans for foster parents, and relative caregivers utilizing feedback and input from DCFS workers (Section 6.2.6)
7. Develop and implement a policy requiring ongoing training for licensed foster parents (Section 40.1).

Additional Action Steps to be incorporated into KCF II –

8. Licensed foster parents and relative caregivers shall be provided with the results and recommendations of all of the Department's screenings and assessments, including the Pre-Passport or its successor, for children placed in their home five days after its completion, unless expressly limited by law or a child's lawful assertion of confidentiality. Licensed foster parents and relative caregivers shall be provided a copy of the child's passport or its successor at the time of placement but no later than five days after its completion, unless expressly limited by law or a child's lawful assertion of confidentiality.

9. Licensed foster parents and relative caregivers will be encouraged and supported to participate in staffings of pre-passports (or successor) for children placed in their homes.
10. The Department shall provide appropriate access to respite care for caregivers requesting and needing this service.
11. The Department shall develop a plan, subject to review and approval of the Panel, for training of unlicensed caregivers (by June 2006).

#### **4. Unsafe/Inappropriate Placements**

##### **A. *Goals:***

1. All children in DCFS's custody shall be placed in safe placements.
2. The State will continue to meet or exceed the federal standard for out-of-home care safety measure.

##### **B. *Outcomes and Benchmarks:***

To be developed according to the provisions of Section III, Paragraphs 5.a, b, c and g.

##### **C. *Action Steps:***

Currently included in KCF II –

1. Increase contact between social worker and family, child and caregivers to at least once every 30 days (Section 11.1.2)
2. Increase compliance with policy requiring workers to visit children in placement within the first week of out-of-home care (Section 14.1.4, beginning in October 2005 and fully implemented by September 2007)
3. A face-to-face safety assessment with a child suspected to be a victim of child abuse or neglect while in the Department's custody shall occur within 24 hours of the report for emergent cases, and within 72 hours of the report for non-emergent cases. (Section 1.1.4 and 1.1.5, by September, 2005 for emergent cases, and September 2006 for non-emergent cases)

Additional Action Steps to be incorporated into KCF II –

4. Children in the custody of the Department will not be placed in:
  - Institutions not designed to receive foster children, such as adult mental hospitals or detox facilities where children and adults are commingled
  - A foster home without specialized training and support to provide for the safety of children in the home when sexually aggressive or physically assaultive children reside in the home
  - DSHS offices, including repeated daily stays at DSHS offices

- Apartment or motels, unless an appropriate licensed foster family or relative caregiver is not available and only with administrative approval and a determination that adequate supervision is provided for the child. This does not preclude appropriate placement in a licensed or approved independent living program.

## **5. Sibling Separation**

### ***A. Goal:***

1. Placement of siblings together is presumed to be in the children's best interest, unless there is a reasonable basis to conclude that the health, safety or welfare of a child is put in jeopardy by the placement.
2. Frequent and meaningful contact between siblings in foster care who are not placed together and those who remain at home should occur, unless there is a reasonable basis to conclude that such visitation is not in the best interest of the children.

### ***B. Outcomes and Benchmarks:***

To be developed according to the provisions of Section III, Paragraph 5.a, b, c and g.

### ***C. Action Steps:***

Currently included in KCF II –

1. Increase quality and frequency of visits between children and their siblings (Section 18.1.1)
2. Improve kinship support services (Section 8.2.1)
3. Hire and train relative search staff to support finding relative resources and supporting Family Team Meetings (Section 8.2.5)
4. Implement case conferences prior to dispositional hearing, as required by 2004 legislation (Section 13.1.7)
5. Develop and implement policies and protocols regarding visitations for children, parents and siblings (Section 18.1.1)
6. Submit and, if approved, implement Title IV-E Demonstration Waiver to develop and deliver kinship supports (Section 38.1.3)

Additional Action Steps to be incorporated into KCF II –

7. Pursuant to the plans developed under KCF II, implement strategies to recruit additional licensed foster care and relative caregivers willing and able to accommodate sibling groups.

## **6. Services to Adolescents**

### **A. *Goal:***

1. Improve the quality and accessibility of services to adolescents in the custody of DCFS consistent with the allegations set forth in Section II, Paragraph 2.3 of the Plaintiffs' Fifth Amended Complaint.
2. Improve the educational achievement of adolescents in the custody of DCFS and better prepare them to live independently.
3. Reduce the number of adolescents on runaway status from foster care.

### **B. *Outcomes and Benchmarks:***

To be developed according to the provisions of Section III, Paragraphs 5.a, b, c and g.

### **C. *Action Steps:***

Currently included in KCF II –

1. Develop an integrated, re-designed service model for adolescents (Section 19.1.1)
2. Offer support services to foster youth until age 21 (Section 10.1.1)
3. Propose statutory change to extend out-of-home care benefits to children through age 21 (Section 10.1.1.)
4. Implement multi-disciplinary staffings for youth 6 months before exit (Section 10.1.2)
5. Establish post-guardianship support program (Section 21.1.3)
6. Develop and implement regional resource centers for post-adoption kinship and post-guardianship families (Section 10.3.3)
7. Establish educational outreach positions to assist children in out-of-home care in meeting higher education goals (Section 15.1.3)
8. Establish Youth Advisory Group (Section 19.1.7)
9. Offer caregivers training on educational advocacy skills (Section 15.1.5)
10. Develop and implement tutoring and mentoring services, in conjunction with existing community resources, to improve educational outcomes for adolescents in out-of-home care (Section 15.1.2).

Additional Action Steps to be incorporated into KCF II –

11. Review systemic data and literature on methods and supports to caregivers to decrease running away behaviors in adolescents, and develop and implement strategies to decrease runaway behaviors.

Additional Outcomes, Benchmarks and Action Steps to achieve this goal will be developed and added to the KCF II Plan as outlined in Section III.5.b of this Agreement, including implementation Outcomes and Benchmarks for an integrated, redesigned service model for adolescents. As appropriate, Outcomes, Benchmarks and Action Steps related to DCFS/School Agreements, meeting children's' needs in the educational system, and discharge planning for adolescents in foster care will also be developed.

## **V. ENFORCEMENT**

The parties agree that this Settlement Agreement is enforceable as follows:

### **A. General Provisions**

1. The parties agree that this Settlement Agreement, including the provisions of KCF II incorporated herein, and the Outcomes, Benchmarks and Action Steps established or modified are incorporated into this Agreement and are enforceable by the Plaintiff class. Prerequisites to and the right to obtain court enforcement of this Agreement are set forth in this Section V. The parties agree that this Settlement Agreement does not contemplate enforcement proceedings on behalf of individual children.
2. The first report of the Panel shall be due one year after the Panel is formed but no later than November 15, 2005. The Panel's first report will set forth the Panel's identification of Outcomes, Benchmarks, Action Steps and Professional Standards, as well as the Department's progress in the meeting the Goals of this Settlement as required pursuant to Section III.5.f, herein.
3. The parties agree that in any enforcement proceeding, there shall be a rebuttable presumption that the Panel's factual findings are correct.
4. Upon the consent of both parties, prior to any court enforcement proceeding, mediation can be utilized; however, either party can reject the use of mediation for any reason or no reason.
5. Notwithstanding the enforcement provisions described below, if at any time while this Agreement is in effect, there is reasonable cause to believe that the Plaintiff class is at immediate and substantial risk of irreparable harm as a result of non-compliance, the Plaintiffs may petition the court for preliminary or permanent injunctive relief to enforce this Agreement. Provided, however, if the non-compliance is due to a claim of lack of funding, enforcement proceedings shall be governed by Section V.B.2 below.

### **B. Enforcement Provisions**

The parties agree that this Agreement provides for three types of enforcement proceedings, including, enforcement proceedings in which (i) non-compliance is based on a failure of implementation; (ii) non-compliance is based on a lack of funding; and (iii) non-compliance involves a combination of (i) and (ii). The following sets forth the parties' agreements for each of these conditions:

## **1. Non-Compliance Based on Failure to Implement**

- i. If the Panel makes a finding in any of its reports that the Department has not implemented one or more of the Action Steps set forth above, or that the Department has failed to reach the annual Benchmarks, the Department shall, within 30 days of the issuance of the report, submit a proposed compliance plan. This compliance plan shall include timetables, and may include additional or different Action Steps for achieving compliance with the Outcomes and Benchmarks. Plaintiffs may comment on the proposed compliance plan, within two weeks of receipt of the Department's plan. The Department will have two weeks to consider the Plaintiffs' comments and make such revisions as it deems appropriate. The Panel shall then have 14 days to accept or reject the plan.
- ii. If the Panel rejects the plan, the Department may submit a revised plan within 21 days. Plaintiffs may comment on the revised plan within 10 days of receipt of the Department's revised plan. The Panel shall then have 14 days to accept or reject the revised plan.
- iii. If the Panel rejects a compliance plan or if the Department fails to submit a plan within the required time period, the Plaintiffs may seek a court order to enforce those provisions.
- iv. If the Panel accepts the Department's proposed compliance plan, the Department will have 6 months to implement the plan before the Panel will make a report on compliance. If at the end of six months the Panel finds that there is a failure to implement the compliance plan and achieve the Outcomes and Benchmarks, Plaintiffs may seek a court order to enforce those provisions.

## **2. Non-Compliance Due to Lack of Funding**

- i. At the time that the Department submits a compliance plan or a revised compliance plan to the Panel as described in Section V.B.1(i) and (ii), it must identify those Benchmarks or Action Steps which have not been implemented or achieved or which can not be implemented or achieved due to lack of funding.
- ii. If the Department identifies lack of funding as the basis for its non-compliance, Plaintiffs may immediately commence an enforcement action in court on behalf of the Plaintiff class, based on a claim that the noncompliance results in constitutionally inadequate care to members of the class. In any such enforcement proceeding, the parties agree that the "Professional Standards" applicable to the six areas identified in this Part IV of this Agreement are those standards identified through the process set forth in Part III 5.c. The parties agree that the court can order expenditures to enforce constitutional mandates only if the court finds that non-compliance results in failing to provide constitutionally adequate

care to children in the Plaintiff class. Nothing in this paragraph prevents Plaintiffs from challenging the Defendant's assertion that lack of funding is the reason for non-compliance.

**3. Non-Compliance Due to Failure to Implement and Lack of Funding**

In the event that the Panel finds that non-compliance is the result of both lack of funding and failure to implement, the Panel can require the Department to develop a compliance plan as described in Section V.B.1 regarding Non-Compliance Due to Failure to Implement, while Plaintiffs, if they choose, simultaneously pursue remedies specified in Section V.B.2.

**VI. CLASS COUNSEL**

1. Plaintiffs' counsel, through the Panel, will have access to systemic data about the Plaintiff class and information about named Plaintiffs.
2. Within 12 months after the date of this Agreement, Plaintiffs' counsel will be offered an opportunity to participate in an established quality service review process of the Department, to be identified by the Department in collaboration with the Panel, that gathers information relevant to assessing progress towards achieving the goals of this Agreement.

**VIII. APPROVAL AND TERMINATION OF AGREEMENT**

1. This Settlement Agreement shall remain in force for a period of 84 months from the date hereof unless an enforcement action (including any action before the Panel, mediator or court) is pending or, the Agreement is terminated earlier by mutual agreement of the parties. In any event, the lawsuit shall be dismissed and the Agreement terminated when the Outcomes have been achieved and sustained for a period of two years.
2. The parties agree that the currently assigned Judge may consider, approve or disapprove this Settlement Agreement and that such action shall have no effect on the pending recusal motions and Affidavits of Prejudice filed by Defendants.
3. The parties agree that this Agreement will be submitted to the Whatcom County Superior Court for review and approval pursuant to Civil Rule 23. The parties agree to request that the Court enter an Order approving the Settlement Agreement, retaining jurisdiction for enforcement purposes only as set forth in Section V.

## **IX. ATTORNEYS' FEES**

1. Within 10 days following court approval of this Agreement, Defendants shall cause to be paid to Plaintiffs' Counsel the sum of ONE MILLION SIX HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,600,000.00 ). By August 1, 2005, Defendants shall cause to be paid to Plaintiffs' Counsel the sum of ONE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$100,000.00). By August 1, 2006, Defendants shall cause to be paid to Plaintiffs Counsel the sum of ONE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$100,000.00).
2. The payments pursuant to Section IX.1 are in full and final settlement of any and all claims that Plaintiffs have or could assert for attorneys' fees or costs of any kind regarding services rendered to the Plaintiff class up to and including the date of this Agreement through July 31, 2006. This provision constitutes a waiver by Plaintiffs' Counsel for any and all fees or costs they incur in the period between July 31, 2004 and July 31, 2006.
3. Beginning August 1, 2006, Plaintiffs are entitled to seek an award of reasonable attorneys' fees and expenses incurred in an enforcement action under Section V of this Agreement and Defendants are entitled to oppose such an award.

**Dated: As of July 31, 2004**

**ON BEHALF OF PLAINTIFF CLASS:**

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John Midgley, WSBA #6511

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Timothy C. Farris, WSBA #7264

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William H. Grimm

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Casey Trupin, WSBA #29287

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Jennie Laird

**ON BEHALF OF DEFENDANTS:**

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Dennis J. Braddock

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Uma S. Ahluwalia.

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William L. Williams, WSBA #6474

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William G. Clark, WSBA #9234