

**BRAAM v. STATE OF WASHINGTON**

**REVISED SETTLEMENT AND EXIT AGREEMENT**

**I. PREAMBLE**

This Revised Settlement and Exit Agreement (herein called “this Agreement”) extends and modifies the original Settlement Agreement, which was entered into between the Department of Social and Health Services (DSHS or Department) and counsel for the *Braam* Plaintiffs (Plaintiffs) on July 31, 2004. The original Settlement Agreement was scheduled to terminate July 31, 2011, and was extended by agreement of the parties through October 31, 2011. This Agreement shall be effective on November 1, 2011.

The parties agree that, in a number of areas, significant progress and improvements to Washington’s child welfare system have been made since 2004. This progress is attributable, in large part, to the commitment of DSHS staff to improve the system; the Governor and the Legislature in providing direction and resources to maintain and improve the child welfare system; the leadership of DSHS and Children’s Administration (CA) for accountability, transparency, and improving the safety and welfare of children in the care of DSHS; and community stakeholders, including Plaintiffs’ counsel, as advocates for necessary change.

**II. STATEMENT OF PURPOSE**

In agreeing to extend the time for achieving the goals of the original 2004 Settlement Agreement, the parties acknowledge the following:

1. The original Settlement Agreement was entered into in 2004, between DSHS and counsel for the class of children in out-of-home placement in the care and custody of CA that was certified in the lawsuit then pending in Whatcom County Superior Court, *Braam v. State of Washington*, No. 98-2-01570-1, to resolve issues identified in the case and provide for systemic improvements to the delivery of child welfare services to children in the class.
2. The original Settlement Agreement established an Oversight Panel, composed of experts in child welfare, to develop measurable outcomes with specific annual benchmarks to achieve the overall Goals identified by the parties in the Agreement. The Oversight Panel was also charged with monitoring the Department’s compliance and making findings with regard to the outcomes, benchmarks and related action steps, developing Professional Standards, and providing advice and technical assistance to DSHS.
3. Despite the Department’s significant progress in a number of areas covered by the 2004 Agreement, the parties acknowledge that the Department has not yet met a number of key outcomes. The parties further acknowledge that new challenges to Washington’s child welfare system have been created by the current challenging economic climate. The Plaintiffs have identified concerns regarding the possible effects of cuts in funding for child welfare and related services and the need to adopt the reforms made to date under

the Settlement Agreement into new models for the delivery of child welfare services required by the enactment of 2SHB 2106 in 2009. The parties agree that the goals stated in Section III below reflect sound child welfare principles and practice and are consistent with the child welfare transformation design process currently under development by the Department. In order to work to achieve the remaining enforceable outcomes, to provide for a period of continued external monitoring, and to provide reasonable assurances that the progress made to date will be sustained in the future, the parties agree to extend and modify the 2004 Settlement Agreement as provided herein.

### **III. RESTATEMENT OF GOALS**

The parties restate and reaffirm the Goals of the 2004 Settlement Agreement as follows:

1. 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.
2. The children in the custody of the Department shall have an initial physical and mental health screening within 30 days of entry into care.
3. Children in the custody of the Department 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. 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.
5. Siblings shall be placed together, unless the health, safety, or welfare of a child is put in jeopardy by the placement.
6. Siblings in foster care who are not placed together and those who remain at home shall have frequent and meaningful contact, unless such visitation is not in the best interest of the children.
7. The Department shall improve the continuity and consistency of education for children in the custody of the Department.
8. The Department shall improve the quality and accessibility of services to adolescents in the custody of the Department to better prepare them to live independently.
9. The Department shall reduce the number of adolescents who run away while in foster care.

As a means of achieving these Goals and maintaining the systemic improvements made to the State's child welfare system for children in out-of-home care in the custody of the Children's Administration of DSHS, the parties agree as follows:

#### IV. DEFINITIONS

1. "Plaintiff Class" means all children in the custody of DSHS who are now placed or in the future will be placed by DSHS in three or more placements and those children in the custody of DSHS who are at risk of three or more placements.
2. A child "in the custody of DSHS" means a child whose custody has been placed with DSHS by court order in a dependency or termination action under RCW Chapter 13.34 or by a voluntary placement agreement between DSHS and the child's parent or guardian. A child "in the custody of DSHS" includes a child in DSHS custody placed with an unlicensed relative or other suitable person.
3. "Placement" means any home or facility, whether public or private, in which the child is placed by DSHS while in the custody of DSHS 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.
4. "Juvenile court" means the Juvenile Division of Washington State Superior Court, presiding over a dependency proceeding pursuant to RCW Chapter 13.34.
5. "Outcome" means a specific and measurable result consistent with the Professional Standards developed by the Oversight Panel and agreed to by the parties and set forth in Section VI below that is intended to promote systemic improvement in the delivery of child welfare services by DSHS to the children in the Plaintiff Class.
6. "Full compliance measure" means the level of performance required for the Department to meet a specific outcome during the reporting period designated for that outcome in Section VI below. Unless otherwise specified in Section VI below, full compliance requires that the Department meet the level of performance on a statewide basis and that no region's performance be more than 10 percentage points lower than the statewide level of performance during the reporting period.
7. "Region" means one of the three administrative subdivisions of DSHS as established by the Department effective May 1, 2011. They are: Region 1, with the Regional Office in Spokane; Region 2, with the Regional Office in Seattle; and Region 3, with the Regional Office in Tacoma. Unless otherwise specified in Section VI below, regional performance will be measured by these three regions for all performance data generated subsequent to July 1, 2011. For Fiscal Year (FY) 2011, regional performance will be measured by the performance data generated for the six regions in existence as of July 1, 2010.

8. "Professional Standards" means the standards of practice related to the care and treatment of children in the custody of DSHS that were developed in March 2007 by the Oversight Panel pursuant to the terms of the 2004 Settlement Agreement.

## V. DURATION OF AGREEMENT AND FULL COMPLIANCE WITH OUTCOMES

1. Duration of the Agreement. This Agreement replaces the original Settlement Agreement and will be in effect for 26 months, starting November 1, 2011, and ending December 31, 2013, after which the Department shall have no reporting obligations under this Agreement except to provide the Plaintiffs with final data on the Department's performance for the period ending on December 31, 2013. The case of *Braam v. State of Washington*, No. 98-2-01570-1, shall be fully dismissed with prejudice on March 31, 2014, unless prior to that date: (1) the parties have entered into a signed agreement to extend and/or modify this Agreement; (2) the Court has already terminated this Agreement pursuant to Section V.3; or (3) Plaintiffs have commenced judicial enforcement proceedings. In the event Plaintiffs receive data on the Department's performance for the final monitoring period of July 1, 2013, to December 31, 2013, after March 31, 2014, this Agreement is extended for 30 days from the date on which the data on the Department's performance is provided to Plaintiffs' counsel.
2. Phased Exit Due to Full Compliance with Individual Outcomes. The Department shall achieve full compliance with any specific outcome listed in Section VI by meeting or exceeding the "full compliance measure" for that outcome for 18 consecutive months. If the Department achieves the full compliance measure for a specific outcome for 18 consecutive months at any time prior to the end of this Agreement, that outcome will no longer be monitored by or enforceable by the Plaintiffs or subject to a Motion to Enforce pursuant to Section V.4. For areas in which the outcome or data source has been changed by this Agreement, the Department's performance during the FY 2011 (July 1, 2010, to June 30, 2011) reporting period shall not count toward achieving compliance with the full compliance measure, except that the Department's performance in FY 2011 for Outcome 3 (Child Health and Education Track (CHET) screen completion) and Outcome 4 (annual mental health and substance abuse screen completion) as they are stated in Section VI below shall count toward compliance.
3. Early Exit Due to Full Compliance with Each and Every Outcome. At any time prior to the expiration of this Agreement, if the Department has achieved the full compliance measure, as defined in Section IV, for each and every outcome listed in Section VI of this Agreement, the Department may seek a court order asking for termination of this Agreement and dismissal of the case.
4. Plaintiffs' Motion to Enforce Agreement. If no Motion to Enforce or Notice of Intent to Enforce Agreement is filed within thirty (30) days of the issuance of the Department's data on its performance for the final reporting period of July 1, 2013, to December 31, 2013, the dismissal of the case with prejudice will be final. Plaintiffs' right to timely

initiate an enforcement action shall be satisfied by a simple pleading (such as a Notice of Intent to Initiate Enforcement Action), to be followed by more specific pleadings pursuant to a briefing schedule established by the court.

5. By entering into this Agreement, the parties do not waive or limit any rights, legal claims or arguments, or remedies that may be available to either party in responding to a motion brought by the other party unless clearly waived or limited herein.
6. This Agreement is entered into between the parties without prejudice to the right of a new Governor or Secretary of the DSHS to seek renegotiation or modification by mutual agreement of any of the terms or provisions set forth herein.

## VI. ENFORCEABLE OUTCOMES

The following outcomes will be the measurable and enforceable outcomes for the duration of this Agreement. Compliance for each outcome will be monitored in six-month periods unless otherwise specified below. The Department will issue data on its performance regarding enforceable outcomes within three months of the end of the reporting period for the outcome, unless otherwise specified below. As further set forth in this Agreement, the Department will be deemed to be in full compliance with an individual outcome if it achieves the “full compliance measure” for 18 consecutive months. For areas in which the outcome or data source has been changed by this Agreement, the Department’s performance during the FY 2011 (July 1, 2010, to June 30, 2011) reporting period shall not count toward achieving compliance with the full compliance measure, except that the Department’s performance in FY 2011 for Outcome 3 (CHET screen completion) and Outcome 4 (annual mental health and substance abuse screen completion) as they are stated below shall count toward compliance. The parties may mutually agree to change the data source for measuring compliance with an individual outcome.

Unless otherwise specifically indicated, the outcomes and reporting requirements set forth below replace and supersede the outcomes, benchmarks, reporting requirements, and any action steps in the Oversight Panel’s July 3, 2008, Revised Implementation Plan.

**Outcome 1:** Children in out-of-home care will receive a private and individual face-to-face health and safety visit from their assigned caseworker, or acceptable substitute worker, at least once every calendar month.

**Full Compliance Measure:** 90% of children in out-of-home care (including trial return home) will receive a health and safety visit each and every month they are in care by their assigned CA caseworker or an acceptable CA or private agency worker. As currently measured by the Oversight Panel under the July 2008 Revised Implementation Plan, and consistent with the reporting measure required by the federal government, CA must provide a visit to an individual child in each month of the 12-month reporting period described below for that child’s case to count as compliant.

**Data Source and Reporting Period:** CA administrative data will be provided every six months with each report covering the previous 12-month calendar or fiscal year. Because data will be reported every six months and compliance is measured over twelve months, consecutive reporting periods may count towards measuring whether the Department has met or exceeded full compliance for this outcome for 18 consecutive months even though the reports cover overlapping 12-month periods.

**Outcome 2:** Caseworkers will have caseloads at or below 18.0 cases per caseworker.

**Full Compliance Measure:** 90% of CA caseworkers carrying cases of children in the Plaintiff Class as defined in Section IV above will have caseloads of 18.0 or fewer cases.

**Data Source and Reporting Period:** CA administrative data will be provided every six months.

This outcome will no longer be monitored or enforceable under this Agreement when the Department has achieved the full compliance measure for all of the following outcomes in this Agreement: Outcome 1 (monthly visits); Outcome 3 (CHET screens); Outcome 6 (placement stability); Outcome 7 (sibling placement); Outcome 8 (sibling visits); Outcome 11 (foster parent information); Outcome 13 (safety in foster care); Outcome 14 (school moves); Outcome 15 (educational needs); Outcome 16 (children identified as sexually aggressive (SAY)); Outcome 17 (children identified as physically assaultive or physically aggressive (PAAY)); Outcome 18 (medically fragile children); and Outcome 19 (youth transition staffing). The parties agree that this list of outcomes has no bearing on the importance of the outcomes and in no way affects Plaintiffs' ability to enforce those outcomes listed or not listed above.

**Outcome 3:** Children in out-of-home care for 45 days or longer will have completed and documented CHET screens within 30 days of entering care.

**Full Compliance Measure:** 90% of children who remain in out-of-home care for 45 or more consecutive days will have a CHET screen completed within 30 days of entering care.

**Data Source and Reporting Period:** CA administrative data will be provided every six months.

**Outcome 4:** Children in out-of-home care will be screened for mental health and substance abuse needs every 12 months.

**Full Compliance Measure:** 90% of children who remain in out-of-home care for 365 consecutive days or longer will have an annual Early Periodic Screening, Diagnosis, and Treatment (EPSDT) exam or other valid mental health screen during the measurement year.

**Data Source and Reporting Period:** DSHS Medicaid billing records, CA administrative data, and case review of a sample of 100 cases determined by administrative data to be non-compliant every 12 months for the fiscal year. Case review will determine whether an annual EPSDT exam or other valid mental health screening occurred during the measurement year. Both administrative data and case review results will determine the Department's compliance with this outcome. The Department will issue data on its performance for this outcome nine months after the end of the reporting period.

**Outcome 5:** All referrals alleging child abuse and neglect of children in out-of-home care will receive thorough investigation by the Division of Licensing Resources (DLR) pursuant to CA policy and timeline and with required documentation.

**Full Compliance Measure:** 95% of referrals alleging child abuse and neglect of children in out-of-home care will receive thorough investigation by DLR pursuant to CA policy and timeline and with required documentation.

**Data Source and Reporting Period:** Case review using a stratified sampling methodology at the 95% statewide confidence level (measuring timeliness and thoroughness of investigation) will be conducted and results will be provided every 12 months for the fiscal year. The Department will issue data on its performance for this outcome nine months after the end of the reporting period.

**Outcome 6:** The percentage of children who experience two or fewer placements during their current out-of-home episode of care will not decline (outcome measure based on percentage of youth entering care during the two previous fiscal years with two or fewer placements (with time-in-care specifications based on entry year)).

**Full Compliance Measure:** The percentage of children who experience two or fewer placements during their current out-of-home episode of care will remain at or above 90%.

**Data Source and Reporting Period:** CA administrative data will be provided every six months with each report covering the previous 24 months. Because data will be reported every six months and compliance is measured over 24 months, consecutive reporting periods may count towards measuring whether the Department has met or exceeded full compliance for this outcome for 18 consecutive months even though the reports cover overlapping 24-month periods.

**Outcome 7:** Children in out-of-home care will be placed with their siblings who are also in out-of-home care whenever possible.

**Full Compliance Measure:** 75% of children in out-of-home care will be placed with their siblings who are also in out-of-home care whenever possible.

**Data Source and Reporting Period:** Case review of 90 cases in which siblings were removed together and remained in care at least 30 days will be completed and provided every six months. Exceptions to CA policy requiring siblings be placed together are attached as Appendix A and will be incorporated into the case review. When appropriate exceptions apply, the Department will review additional cases up to a limit of 20% of the original sample size. The Department's performance will be determined based on the percent of cases in which siblings were placed together out of those in which siblings were removed together and remained in care at least 30 days, excluding from the numerator and denominator of the measure those not placed together due to appropriate exceptions.

**Outcome 8:** Children placed apart from their siblings will have two or more monthly visits or contacts (not including staffing meetings or court events), with their siblings unless the case meets an exception agreed to by the parties.

**Full Compliance Measure:** 90% of children placed apart from their siblings will have two or more monthly visits or contacts (not including staffing meetings or court events) with their siblings.

- Full compliance for this outcome does not require consideration of regional variation due to the relatively small number of cases that will be reviewed in the reporting period.

**Data Source and Reporting Period:** Case review of 50 cases of children who have been separated from at least one sibling as a result of the child's placement in out-of-home care will be completed and provided every six months. Exceptions to CA policy requiring sibling visits are attached as Appendix B and will be incorporated into the case review. When appropriate exceptions apply, the Department will review additional cases up to a limit of 20% of the original sample size. The Department's performance will be determined based on the percent of cases in which siblings placed apart had two or more monthly visits or contacts out of those in which siblings were placed apart, excluding from the numerator and denominator of the measure those cases in which sibling visits or contacts did not occur due to appropriate exceptions.

**Outcome 9:** Licensed caregivers will report receiving adequate training for their roles and responsibilities.

**Full Compliance Measure:** 90% of licensed caregivers will report receiving adequate training for their roles and responsibilities.

**Data Source and Reporting Period:** The Department will conduct an annual survey of foster parents and provide the results annually.

This outcome will no longer be monitored or enforceable under this Agreement when the Department has achieved the full compliance measure for all of the following outcomes in this Agreement: Outcome 1 (monthly visits); Outcome 6 (placement



stability); Outcome 8 (sibling visits); Outcome 11 (foster parent information); Outcome 12 (ratio of foster care beds); Outcome 16 (children identified as SAY); Outcome 17 (children identified as PAAY); and Outcome 18 (medically fragile children). The parties agree that this list of outcomes has no bearing on the importance of the outcomes and in no way affects Plaintiffs' ability to enforce those outcomes listed or not listed above.

**Outcome 10:** Licensed caregivers will report receiving adequate support for their roles and responsibilities.

**Full Compliance Measure:** 90% of licensed caregivers will report receiving adequate support for their roles and responsibilities.

**Data Source and Reporting Period:** The Department will conduct an annual survey of foster parents and provide the results annually.

This outcome will no longer be monitored or enforceable under this Agreement when the Department has achieved the full compliance measure for all of the following outcomes in this Agreement: Outcome 1 (monthly visits); Outcome 6 (placement stability); Outcome 8 (sibling visits); Outcome 11 (foster parent information); Outcome 12 (ratio of foster care beds); Outcome 16 (children identified as SAY); Outcome 17 (children identified as PAAY); and Outcome 18 (medically fragile children). The parties agree that this list of outcomes has no bearing on the importance of the outcomes and in no way affects Plaintiffs' ability to enforce those outcomes listed or not listed above.

**Outcome 11:** Licensed caregivers will receive appropriate and timely information about the needs of children placed with them.

**Full Compliance Measure:** 90% of licensed and unlicensed caregivers will be provided adequate information about the needs of the child placed with them (including but not limited to behavioral, medical, developmental and educational needs).

**Data Source and Reporting Period:** The first reporting period for this outcome will be from January 1, 2012, to June 30, 2012. This outcome will be measured by case review of children in out-of-home care for more than 30 days who were initially placed or changed placements within the last six months. The sample size for the initial case reviews will be 50 cases. When performance exceeds 20 percent, the subsequent case review samples will increase to 100. When performance exceeds 40 percent, the subsequent case review samples will increase to 200. The results of these reviews will be provided every six months.

Case review will measure whether the caseworker provided the caregiver a completed Child Information / Placement Referral Form (DSHS 15-300). Compliance is achieved when the referral form is signed by the caregiver indicating they received

the information and dated showing that they received the information within the required timeframes or verified by Department records showing an email containing the information was sent to the foster parent within the required timeframe. The required timeframes are: within 72 hours of an initial placement; and at or before a planned change in placement or within 24 hours of an urgent placement change.

Children's Administration will convene a workgroup to review the Child Information and Placement Referral Form (DSHS 15-300) to ensure it contains all information required to be provided to caregivers. The workgroup members will include the following: CA regional staff, Plaintiffs' counsel, youth currently or formerly in foster care (Passion to Action), foster parents/caregivers, Fostering Well-Being Unit staff, and others as identified. If the form is revised, the Department's performance on providing the revised form to caregivers will be determined in the reporting period that begins after the form is revised and uploaded into CA's administrative data system.

**Outcome 12:** The Department will maintain an adequate ratio of licensed foster care beds to children in licensed foster homes.

**Full Compliance Measure:** The average monthly ratio of licensed foster care beds to children in licensed care will be at least 2.0.

**Data Source and Reporting Period:** CA administrative data will be provided every six months.

**Outcome 13:** The percentage of children who are not victims of a founded report of child abuse or neglect by a foster parent or facility staff member will meet or exceed the federal Child and Family Services Review (round 2) standard.

**Full Compliance Measure:** At least 99.68% of children will not be victims of a founded report of child abuse or neglect by a foster parent or facility staff member.

- The Department is not required to meet the regional variation in order to achieve the full compliance measure.

**Data Source and Reporting Period:** CA administrative data developed for federal report will be provided every 12 months for the fiscal year.

**Outcome 14:** The number of school age children who experience a change in school when they enter out-of-home care or change placement during the school year will remain at or below 20.0%.

**Full Compliance Measure:** No more than 20.0% of school age children entering out-of-home care or changing placement during a school year will experience a change of schools. Children being placed with relatives or siblings are excluded from this measure.

**Data Source and Reporting Period:** CA administrative data will be provided every 12 months for the fiscal year.

**Outcome 15:** Caseworkers will take the required steps to meet the educational needs of children in out-of-home care.

**Full Compliance Measure:** For the first six-month reporting period the Department will take the required steps to meet the educational needs of 80% of school age children in out-of-home care. For the second six-month reporting period the Department will take the required steps to meet the educational needs of 85% of school age children in out-of-home care. For subsequent six-month reporting periods, the Department will take the required steps to meet the educational needs of 90% of school age children in out-of-home care.

**Data Source and Reporting Period:** A case review of 100 cases every six months will be completed and results will be provided every six months. The sample will be stratified to ensure that cases for children across grade levels are reviewed. The first reporting period for this outcome will be January 1, 2012, to June 30, 2012. Case review will measure the Department's performance on the following elements: attendance; enrollment; academic progress; special education where appropriate; discipline; planning for post-secondary education or training where appropriate; and whether the education plan was completed and updated every six months.

### *Outcomes for Special Populations of Children in CA Custody*

**Outcome 16:** Children identified as sexually aggressive (SAY) pursuant to the statutory definition will be placed with caregivers who have received specialized training and have a plan developed to address safety and supervision issues.

**Full Compliance Measure:** 95% of children identified as SAY pursuant to the statutory definition will be placed with caregivers who have received specialized training and have a plan developed to address safety and supervision issues.

**Data Source and Reporting Period:** CA administrative data will be provided every six months.

**Outcome 17:** Children identified as physically assaultive or physically aggressive (PAAY) pursuant to the statutory definition will be placed with caregivers who have received specialized training and have a plan developed to address safety and supervision issues.

**Full Compliance Measure:** 95% of children identified as PAAY pursuant to the statutory definition will be placed with caregivers who have received specialized training and have a plan developed to address safety and supervision issues.

**Data Source and Reporting Period:** CA administrative data will be provided every six months.

**Outcome 18:** Medically fragile children will be connected to ongoing and appropriate medical care and placed with caregivers who have specialized skills or receive consultation and ongoing training regarding their caretaking responsibilities for the medical condition.

**Full Compliance Measure:** 95% of medically fragile children will be connected to ongoing and appropriate medical care, will have their medically fragile status documented in CA's administrative data system, and will have their Caregiver Support Plan uploaded into CA's administrative data system.

**Data Source and Reporting Period:** For the first six-month reporting period, the Department will conduct a case review of medically fragile children who receive care coordination from the Fostering Well-Being Unit. For all subsequent six month reporting periods, the Department will conduct a case review of all medically fragile children. Case review results will be provided every six months. The case review will determine whether medically fragile children were connected with ongoing and appropriate medical care, their medically fragile status is documented in CA's administrative data system, and the Caregiver Support Plan is uploaded into CA's administrative data system.

**Outcome 19:** A multi-disciplinary staffing meeting will be held at least six months before a youth in foster care turns 18 years old to address issues related to transition to independence.

**Full Compliance Measure:** 95% of youth in foster care who are turning 18 years old will have a multi-disciplinary staffing meeting at least six months prior to turning 18 years old to address issues related to transition to independence.

**Data Source and Reporting Period:** CA administrative data will be provided every six months.

**Outcome 20:** The percentage of children who run from out-of-home care placements will be reduced.

**Full Compliance Measure:** No more than 2.35% of children in foster care will run from out-of-home care placements.

- Compliance with this outcome requires the full compliance measure to be met. In addition, for full compliance to be met, the data must indicate that less than 2.59% of children in foster care in each region ran from out-of-home placements.

**Data Source and Reporting Period:** CA administrative data will be provided every six months with each report covering the previous 12-month calendar or fiscal year.

Because data will be reported every six months and compliance is measured over twelve months, consecutive reporting periods may count towards measuring whether the Department has met or exceeded full compliance for this outcome for 18 consecutive months even though the reports cover overlapping 12-month periods.

**Outcome 21:** The median number of days that children are on runaway status will be reduced.

**Full Compliance Measure:** The median number of days that children are on runaway status will be no more than 25.0.

- Compliance with this outcome requires the full compliance measure to be met. In addition, for full compliance to be met, the data must indicate that the median number of days that children are on runaway status in each region must be less than 30.0 during the 12-month period measuring full compliance.

**Data Source and Reporting Period:** CA administrative data will be provided every six months with each report covering the previous 12-month calendar or fiscal year. Because data will be reported every six months and compliance is measured over twelve months, consecutive reporting periods may count towards measuring whether the Department has met or exceeded full compliance for this outcome for 18 consecutive months even though the reports cover overlapping 12-month periods.

## VII. ADDITIONAL AGREEMENT

Within one day of publicly submitting to the Office of Financial Management a budget decision package that may relate to the Department's compliance with this Agreement, the Department will notify Plaintiffs of the decision package, explain the elements of the decision package, and identify those parts that the Department believes are relevant to compliance with this Agreement. This provision will be effective January 1, 2012. Upon request, the Department shall promptly meet with Plaintiffs to discuss the decision package.

## VIII. ROLE AND RESPONSIBILITIES OF THE OVERSIGHT PANEL

1. For the first 14 months of this Agreement, from November 1, 2011, to December 31, 2012, the Oversight Panel created by the original *Braam* Settlement Agreement, dated July 31, 2004, will remain in operation and staffed as necessary to monitor the Department's performance and compliance as specifically provided below.
2. During the first 14 months of this Agreement, the Oversight Panel and its staff will have the following responsibilities:
  - a. The Oversight Panel will monitor the Department's compliance with the specific outcomes identified in Section VI of this Agreement. The Department shall provide the data to determine whether the full compliance measure was met for

each outcome under Section VI of this Agreement to the Oversight Panel in sufficient time for the Oversight Panel to issue semi-annual monitoring reports for the periods July 1, 2011, to December 31, 2011; January 1, 2012, to June 30, 2012; and July 1, 2012, to December 31, 2012. Each monitoring report shall include a determination as to whether the Department has achieved full compliance with each outcome set forth in Section VI of this Agreement. Additionally, the Panel may comment on the Department's strategies to meet the full compliance measure for any outcome.

- b. The Panel will conduct public meetings during this period to coincide with the issuance of its semi-annual monitoring reports. The parties may agree to additional public meetings.
  - c. If the parties disagree about the requirements under Section VI above regarding enforceable outcomes, the parties may resolve their dispute through mediation by a Panel member. If the parties choose to do so, the parties by agreement will select one member of the Panel to assist in mediating that disagreement. If the parties cannot agree on a single Panel member, each party may designate a Panel member.
  - d. While the Panel's monitoring responsibilities will cease on December 31, 2012, the Panel and its staff may meet as the Panel determines necessary between January 1, 2013, and March 31, 2013, to review data on the Department's performance for the period from July 1, 2012, to December 31, 2012, complete its final monitoring report, and hold an exit meeting in consultation with the parties.
  - e. The Department shall maintain and provide the Oversight Panel and Plaintiffs with the data required to determine whether the full compliance measure was met for each outcome under Section VI of this Agreement. The Department shall not be required to provide additional reports for any other purpose unless otherwise mutually agreed to by the parties.
3. From January 1, 2013, to December 31, 2013, the Panel will no longer be responsible for monitoring the Department's compliance or issuing reports under this Agreement. During this period the Department may request the voluntary involvement of the Panel or any Panel member for consultation or technical assistance to assist the Department in achieving outcomes or any other of its responsibilities set forth in this Agreement. The parties by agreement may request an individual member of the Panel to act as a mediator in resolving issues mutually identified by the parties. If the parties cannot agree on a single Panel member, each party may designate a Panel member.
4. 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's role will be limited to monitoring the Department's compliance with the outcomes set forth in Section VI of this Agreement.

5. In order to allow Panel members to carry out their duties, the Department shall reimburse Panel members for time and expenses spent serving on the Panel, consistent with the level of participation set forth above. The Department will continue to provide sufficient resources for the Oversight Panel to maintain or hire staff, commensurate with the level of responsibility required under this Agreement, including any duties under Section VIII.
6. The Department agrees to provide the Plaintiffs with data on the Department's performance on all remaining enforceable outcomes for the period from January 1, 2013, to December 31, 2013, to the same extent it provided such reports and data to the Oversight Panel under this Agreement. Additionally, it will provide Plaintiffs with all reports on any outcome in this Agreement for which the full compliance measure has been achieved and is no longer subject to monitoring or enforcement to the extent such reports are generated for regular (not incident-specific) management purposes, public information or Federal or State reporting purposes.

#### **IX. ENFORCEMENT OF THIS AGREEMENT**

1. When the Department provides data regarding its progress in achieving the outcomes set forth in Section VI, it will identify each outcome covered by the report for which it has met the full compliance measure for the reporting period. Once the Department has met the full compliance measure for an outcome for at least 18 consecutive months, that outcome is no longer enforceable and is no longer monitored under this Agreement.
2. When the Department provides data regarding its progress in achieving the outcomes set forth in Section VI, it will identify each outcome for which it is providing data for which it has not met the full compliance measure for the reporting period and will identify the strategies it used to improve performance in the last reporting period and the strategies it plans to use to improve performance in the next reporting period.
3. After the Department provides data regarding its progress in achieving the outcomes set forth in Section VI, the Department will promptly meet with the Plaintiffs upon request to discuss any issues arising out of the data or report.
4. Judicial Enforcement: Upon receiving the Department's data regarding its progress in achieving the outcomes set forth in Section VI, the Plaintiffs may petition the court for an order to enforce individual outcomes for which the Department has not achieved full compliance. The full compliance measure for each outcome is listed in Section VI of this Agreement.

Notwithstanding the enforcement provisions in this Agreement, 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, or is at risk of suffering a violation of their constitutional rights, the Plaintiffs may petition the court for an order to enforce this Agreement.

In *Braam v. Dept. of Soc. and Health Svcs.*, 150 Wn.2d 689, 710 (2003), the Washington Supreme Court found that “lack of funds does not excuse a violation of the constitution and this court can order expenditures, if necessary, to enforce constitutional mandates.” In any enforcement proceeding alleging a constitutional violation of the rights of the Plaintiff Class, the applicable “Professional Standards” are the standards of practice related to the care and treatment of children in the custody of DSHS that were developed in March 2007 by the Oversight Panel pursuant to the terms of the 2004 Settlement Agreement.

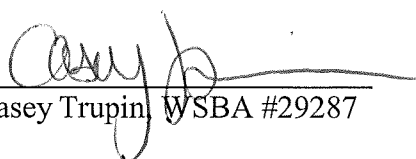
#### X. ATTORNEYS’ FEES

The Parties agree to continue the current framework for payment of attorneys fees adopted by Whatcom County Superior Court on June 29, 2009, and incorporated by reference into the original Settlement Agreement. The specific provisions of the June 29, 2009, order and agreement are modified as follows:

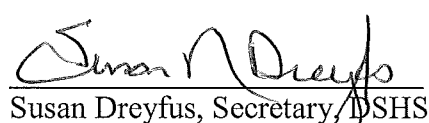
1. The Department shall pay Plaintiffs’ counsel the sum of one hundred thirty four thousand and four hundred dollars (\$134,400.00) annually while this Agreement remains in effect. For periods of time where this Agreement is not in effect for an entire fiscal year, the parties agree that the amount for that fiscal year will be pro-rated based on the number of months during the fiscal year that this Agreement was in effect.
2. A year for purposes of this annual payment will be the State of Washington’s fiscal year: July 1 of one calendar year to June 30 of the next calendar year. In exchange for this annual payment, Plaintiffs’ counsel waive any future claim for any and all attorneys’ fees or costs they may incur in any enforcement action they may bring pursuant to Section IX of this Agreement as long as this Agreement remains in effect. The Department shall pay Plaintiffs’ counsel in two installments per year at approximately December 31<sup>st</sup> and June 30<sup>th</sup>.
3. Plaintiffs’ counsel agree to continue to maintain reasonable documentation of the work they do related to this Agreement and provide it on reasonable request to the Department, the Office of Financial Management, or the Washington State Auditor.

DATED THIS 31 DAY OF Oct, 2011

ON BEHALF OF PLAINTIFF CLASS:

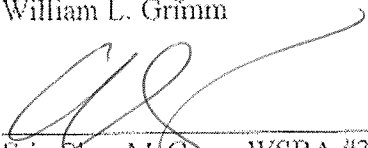
  
Casey Trupin, WSBA #29287

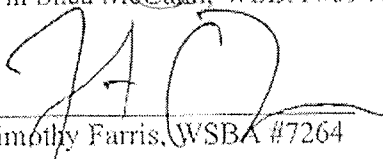
ON BEHALF OF DEFENDANT DSHS:

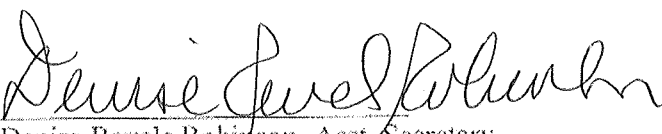
  
Susan Dreyfus, Secretary, DSHS



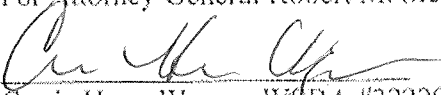
  
William L. Grimm

  
Erin Shea McCann, WSBA #39418

  
Timothy Farris, WSBA #7264

  
Denise Revels Robinson, Asst. Secretary  
Children's Administration, DSHS

For Attorney General Robert M. McKenna:

  
Carrie Hoon Wayno, WSBA #32220

  
Rochelle Tillet, WSBA #7897

  
Sheila Malloy Huber, WSBA #8244

**BRAAM v. STATE OF WASHINGTON**

**REVISED SETTLEMENT AND EXIT AGREEMENT**

Appendix A - Exceptions to Sibling Placement

Any decision to separate siblings initially, during or after placement should be handled as an exception to policy and must be clearly documented.

There are times when siblings should not be placed together. Siblings may be separated and placed apart only under the following circumstances:

- 1) As a result of a admission of a sibling into detention, a psychiatric hospital or a residential treatment setting to meet the unique and individualized needs of one of the siblings;
- 2) A sibling becomes a significant threat to the safety of another sibling or cannot be controlled if the siblings are placed together;
- 3) A sibling becomes a significant threat to the safety of another person in the placement, and the risk to that person cannot be controlled if the sibling remains. If movement of the entire sibling group is determined not to be in their overall best interest, the sibling presenting the threat will be moved;
- 4) A sibling with a physical, emotional or mental condition requires specialized services in order to accomplish specific therapeutic goals. The sibling may be placed apart from other siblings for the length of time necessary to meet the need requiring separate placement;
- 5) An abusive relationship between the siblings exists where therapy, with a safety plan in place, is not effective or not the appropriate intervention;
- 6) To permit placement with relatives who live near the home of the siblings. Thus, a large sibling group may be placed in two related homes near their family home if necessary to place them in close proximity to their family;
- 7) Court order prohibits the Department from placing siblings together; or
- 8) Other extraordinary circumstances that are documented and approved under these procedures.

Written approval by the Supervisor and Area Administrator is needed if siblings are not placed together.

Whenever siblings are separated, every effort shall be made to place them in close proximity to each other, unless there is an exception as noted above.

**BRAAM v. STATE OF WASHINGTON**

**REVISED SETTLEMENT AND EXIT AGREEMENT**

Appendix B – Exceptions to Sibling Visits

Children placed apart from their siblings will have two or more monthly visits or contacts (not including staffing meetings or court events), with their siblings unless the case meets an exception agreed to by the parties. These exceptions include:

- 1) A court order prevents or limits visits or contacts; or
- 2) The Children's Administration determined visits or contacts:
  - a. were contrary to the child's health, safety or welfare; or
  - b. would hinder reunification efforts; or
- 3) The child's file documents that:
  - a. The child and/or sibling were developmentally able to determine his/her needs for sibling contact and requested that contact occur less than two times per month (or not at all); or
  - b. The parent of a non-dependent sibling objected to or wished to limit visits/contacts with the dependent sibling; or
  - c. The facility where the child/sibling resides prohibits or limits visits/contacts with siblings (i.e., during the intake period at in-patient facilities); or
  - d. The child is on the run from his/her placement for a majority of the calendar month during which compliance is being measured; or
  - e. The child is not complying with visitation arrangements.

Exceptions must be approved by the supervisor and documented in the child's file.