

ENDORSED  
FILED  
San Francisco County Superior Court

NOV - 4 1997

ALAN CARLSON, Clerk  
BY: CARMEN LI Deputy Clerk

CALIFORNIA SUPERIOR COURT  
CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT NUMBER EIGHT

12 HEIDI BOHLER, ) NO. 987660  
13 )  
13 Petitioner, ) ORDER GRANTING WRIT OF  
14 ) MANDATE  
14 vs. )  
15 )  
15 ELOISE ANDERSON, Director, )  
16 California Department of Social )  
16 Services, and CALIFORNIA )  
17 DEPARTMENT OF SOCIAL SERVICES, )  
18 Respondents.  
19

20 This matter came on regularly for hearing on October 17,  
21 1997, the Honorable Raymond D. Williamson, Jr., Judge presiding  
22 in Department 8, Writs and Receivers. Petitioner was represented  
23 by Maria Ramiu, Attorney at Law. Respondent was represented by  
24 Elizabeth Edwards, Deputy Attorney General. The Court has  
25 reviewed and considered all the briefs and arguments of the  
26 parties and finds as follows:

27 The parties agree that children at risk for out-of-home  
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1 foster care and child welfare services must be assessed for  
2 appropriate placement and other services. They also agree that  
3 the need for a standard assessment procedure was recognized by  
4 the Legislature, and was addressed when the Legislature  
5 promulgated Welfare and Institutions Code section 11467.

6 Petitioner asserts that children have been harmed by the  
7 Department of Social Services' ("Department") failure to develop  
8 a level of care assessment instrument and process as required by  
9 Welfare and Institutions Code Section 11467, subdivision (d).

10 Petitioner seeks a Writ of Mandate to compel the Department to  
11 comply immediately with the statute.

12 Respondent argues that the harm as alleged by petitioner is  
13 not occurring and that the level of care assessment instrument  
14 previously developed by the Department in 1991 would result in  
15 harm to children if implemented. The Department asserts that the  
16 level of care assessment instrument currently being developed  
17 cannot be "rushed" without risking that this new instrument will  
18 also be potentially harmful to children receiving child welfare  
19 services.

20 Each side contends that its position and proposal is in the  
21 best interests of the children who come within the scope of  
22 Section 11467. The Court acknowledges the good faith and  
23 interest of both sides in their effort to best serve at-risk  
24 children.

25 The Court is concerned that the original goal of the  
26 Legislature is not being met. The Legislature provided four  
27 years from the effective date of the legislation for the design  
28 and implementation of a level of care instrument. The level of

1 care instrument should have been in place by July 1, 1994, yet  
2 three and one half years have passed since that deadline and  
3 still no level of care instrument is in sight. The Court is also  
4 concerned that the very children who should benefit from this  
5 legislation may reach adulthood before a level of care assessment  
6 instrument is developed and implemented.

7 The Department of Social Services has seemingly developed a  
8 position that the legislative intent in this code section, or the  
9 level of care assessment instrument itself, is or may be no  
10 longer in the best interests of the children. As long as  
11 legislation is "on the books" the Department has a duty to comply  
12 with the deadlines imposed by the Legislature. If the Department  
13 determines their current efforts will not fulfill the goals of  
14 the Legislature, it should return to the Legislature to request  
15 modification or cancellation of the current Welfare and  
16 Institutions Code section.

17 Based on Petitioners showing, the Court finds that the  
18 Respondents have not exercised their discretion with reasonable  
19 speed and diligence. It appearing to the Court that Respondents  
20 are under a clear and present legal duty to develop and implement  
21 a level of care assessment instrument and process required by  
22 Welfare and Institutions Code Section 11467, that Respondents  
23 have the present ability to perform that duty but have failed to  
24 perform it, and that Petitioner, who has standing to sue, has no  
25 plain, speedy, and adequate remedy in the ordinary course of law  
26 other than the issuance of a writ of mandate as requested in the  
27 petition,

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that a Writ of  
2 Mandate ISSUE under the seal of this Court commanding Respondents  
3 in this action, California Department of Social Services and its  
4 Director, Eloise Anderson, to:

5 1. On or before March 1, 1998 develop a level of care  
6 instrument and process which meets the requirement of the Welfare  
7 & Institutions Code section 11467; and

8 2. On or before July 1, 1998 fully implement, by requiring  
9 all counties to use, the level of care assessment instrument and  
10 process so developed.

11 IT IS FURTHER ORDERED that Petitioner recover costs of this  
12 action.

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14 Dated: November 4, 1997

  
Raymond D. Williamson, Jr.  
Judge of the Superior Court

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