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ENDORSED
FILED
San Francisco County Superior Court

OCT 31 2002

GORDON PARK-LI, Clerk
BY: VERA MU
Deputy Clerk

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO-UNLIMITED JURISDICTION

12
13 **REVEREND FRANK HIGGINS,**
14 **Petitioner/Plaintiff,**
15 **v.**
16
17 **RITA SAENZ, in her capacity as Director of the**
California Department of Social Services;
18 **CALIFORNIA DEPARTMENT OF SOCIAL**
SERVICES,
19 **Respondents/Defendants.**
20

CASE NO. CPF-02-501937
STIPULATED
SETTLEMENT AGREEMENT
AND ORDER

21 **I.**
22 **PARTIES TO THE SETTLEMENT AGREEMENT**

23 The parties to this Settlement Agreement (Settlement Agreement or Agreement) are
24 Petitioner/Plaintiff Reverend Frank Higgins (Higgins) and Respondents/Defendants Rita Saenz,
25 Director, California Department of Social Services, and California Department of Social Services
26 (collectively referred to as CDSS).

27 ///
28 ///

1 II.

2 OBJECTIVES OF THE AGREEMENT

3 CDSS is responsible for administering laws relating to child welfare services. When
4 children must be removed from the custody of their parents because of abuse, neglect, or
5 abandonment, state and federal law require child welfare agencies to consider placement with
6 relatives who are willing and able to care for them before looking for alternative placements with
7 care-givers who are strangers. In order to ensure that children placed with relatives are safe, both
8 state and federal law (Welf. & Inst. §§ 309, subd. (d) & 361.3, 42 U.S.C. § 672(c), & 45 C.F.R.
9 § 1355.20(a)(2)) require that relative placements meet basic health and safety standards
10 established for licensing foster families. CDSS is required to certify that the homes of relative
11 foster parents have either been licensed or approved as meeting these standards.

12 California provides foster care maintenance payments for the care of all children who
13 qualify under Title IV-E of the Social Security Act and for all children living with non-related
14 foster parents. To receive federal foster care funds, CDSS must certify to the federal government
15 that the homes of all federally funded relative foster parents have been either licensed or
16 approved as meeting these licensing standards. Approximately 40 % of foster children in
17 California have been placed in the homes of relatives. The majority of these relatives receive
18 foster care payments to meet the child's basic expenses. To receive federal funds for the
19 operation of the foster care system, CDSS must submit a plan (IV-E plan) to the U.S. Department
20 of Health and Human Services (HHSA), providing assurances that California is, and will be, in
21 compliance with federal requirements for receipt of these funds, specifically 42 U.S.C. §
22 671(a)(10), 42 U.S.C. § 672(c), and 45 C.F.R. § 1355.20(a)(2).

23 In 2001, the Legislature amended Welfare and Institutions Code sections 309 and 361.3
24 to clarify that California's relative approval process employ the same standards used to license
25 foster care homes in accordance with the federal Adoption and Safe Families Act of 1997 (Act),
26 and therefore, California's compliance with the Act entitles it to continuous Title IV-E foster care
27 maintenance and administrative payments. (Welf. & Inst. Code, §§ 309 & 361.3.) The Act was
28 implemented by federal regulation effective September 2000. (45 C.F.R. § 1355.20(a)(2).)

1 Counties operate child welfare systems, including the actual oversight of foster care
2 provided by relatives. In doing so, counties are required to comply with federal and state law,
3 including regulations and All County Letters (ACLs) issued by CDSS.

4 Because both Higgins and CDSS share the common goals of protecting the health and
5 safety of foster children, supporting the placement of foster children with relatives who are
6 willing and able to care for them, and ensuring California's compliance with state and federal law
7 which require that California's approval process employ the same standards used to license foster
8 care homes, the parties enter into this Agreement.

9 III.

10 CONDITIONS OF SETTLEMENT

11 Both Higgins and CDSS agree that CDSS should take the following actions to ensure
12 compliance with federal law, and to maximize receipt of federal funding. Higgins and CDSS
13 hereby stipulate and agree that:

14 1. CDSS will establish a procedure for county approval of unlicensed foster family
15 homes of relative caregivers (and non-relative extended family members referred to collectively
16 as relative caregivers) based upon the same standards used for approving licensed foster care
17 homes. These unlicensed foster family homes shall be approved by counties prior to claiming
18 eligibility for Federal Title IV-E participation for the placement. Once approved, all relative
19 caregiver homes shall be re-approved by counties annually. CDSS will establish standards,
20 guidelines, and forms for counties to follow for approving relative caregivers which ensure that
21 all relative caregivers receiving foster care payments are assessed to determine whether they
22 meet all licensing/approval requirements, by a process equivalent to that used for licensed foster
23 family home providers, and that the relative caregivers do, in fact, meet these requirements.
24 CDSS will require that counties approve unlicensed relative caregiver homes using the standards
25 identified in Division 31 at Manual of Policies and Procedures (MPP), subsection 31-445.3
26 which incorporates Title 22, California Code of Regulations, Division 6, Licensing of
27 Community Care Facilities, Chapter 9.5, Foster Family Homes, Article 3, Licensing/Approval
28 standards, to wit, §§ 89317-89388. CDSS will inform counties of these procedures in an All

1 County Letter (ACL), which CDSS will issue no later than ten days of the court's approval of this
2 settlement agreement. The ACL will require counties to follow the policies and procedures set
3 forth in this ACL. (The ACL and forms are attached as Exhibit A.)

4 2. CDSS will monitor county compliance of the relative approval process for relative
5 caregivers (set forth in paragraph 1 above) through a two phase monitoring program. First,
6 CDSS will implement a short term monitoring plan, commencing upon court approval of the
7 settlement agreement, and completed on December 31, 2002, under which CDSS will conduct an
8 on-line review of 620 cases of actual relative placements through the child welfare services case
9 management system, to examine compliance with relative home approval requirements.
10 Second, CDSS will implement a long term monitoring plan starting January 1, 2003, under
11 which CDSS will conduct an on-line review of a statistically valid sample of relative placements
12 in each of the 58 counties annually through the child welfare services case management system,
13 to examine compliance with relative home approval requirements. Included in the case sample
14 will be both cases supervised by county welfare departments and by county probation
15 departments. In both plans, CDSS will identify counties with significant deficiencies, will
16 require these counties to develop a corrective action plan in order to reach compliance, and will
17 require the counties' actual compliance. CDSS shall also provide technical assistance. If CDSS
18 identifies cases out of compliance with relative approval requirements, CDSS shall require the
19 affected county to deduct federally ineligible costs from the county's current month assistance
20 claim. When CDSS receives the federal assistance claim from the county, it shall verify that all
21 ineligible costs have been removed. All federally eligible costs will then be reported on the
22 State's federal IV-E report form. (The monitoring plan is attached in Exhibit B.)

23 3. CDSS will establish a policy requiring counties to conduct, within 30 calendar days or
24 by the date of disposition hearing, whichever is sooner, a home assessment of a relative who is a
25 grandparent, aunt, uncle, or sibling of the child or children to be placed, who has expressed an
26 interest in placement, or any relative and non-relative extended family member who is being
27 considered by the county for placement, and determine whether or not that home is approvable.
28 Counties will not be required to perform a home assessment of a relative or non-relative

1 extended family member whose approval would be denied based on criminal convictions records
2 or child abuse registry information. CDSS will inform counties of these policies in an ACL
3 which CDSS will issue no later than ten days of the court's approval of this settlement agreement.
4 This ACL will include the requirement that counties investigate complaints against approved
5 homes. (The ACL is attached as Exhibit C.)

6 4. CDSS will issue a policy requiring counties to provide written notice of any decisions
7 regarding approval to applicants and to administer a grievance process consistent with the
8 procedures set forth in CDSS regulations at MPP 31-020 et. seq. when a disapproved relative
9 caregiver has objected to the disapproval in writing within five working days of the relative
10 caregiver's receipt of notice of the disapproval. The parties to this action stipulate that these
11 procedures comply with due process requirements. CDSS will inform counties of these policies
12 in an ACL which CDSS will issue within ten days of the court's approval of this settlement
13 agreement. (The ACL is attached as Exhibit C.)

14 5. In the two years following court approval of the Settlement Agreement, should CDSS
15 seek to make any changes to the attachments to this Agreement (Exhibits A-C), the parties shall
16 meet and confer before CDSS makes any changes. CDSS need not meet and confer about, and
17 instead shall only provide Higgins' counsel notice of, any changes to the attachments mandated
18 by directives made by the federal government.

19 6. Before and through the time of court approval of this Agreement, both parties agree to
20 bear their own fees and cost, including but not limited to, attorney's and expert witness fees and
21 costs. After court approval of the agreement, if Higgins brings an action in a court of law to
22 enforce the terms of this Settlement Agreement and Order, the parties agree that the court may
23 award costs and reasonable attorney's fees, to Higgins' counsel, for the work performed
24 specifically relating to the court action if Higgins is the prevailing party.

25 7. The intent of this Settlement Agreement is to comply with Welfare and Institutions
26 Code sections 309, subdivision (d), and 361.3, 42 U.S.C. § 672(c), and 45 C.F.R. § 1355.20(a)(2).
27 CDSS does not concede that the procedures set forth in this Agreement regarding the grievance
28 process are required to comply with the due process clause of the United States Constitution. In

1 any proceeding to enforce the obligations contained in this Agreement, the court shall be limited
2 to ensuring that the relief requested is necessary to comply with Welfare and Institutions Code
3 section 309, subdivision (d), 42 U.S.C. § 672(c), and 45 C.F.R. § 1355.20(a)(2). In the event that
4 the statutes and regulations cited in this Agreement are modified or repealed, nothing in the
5 Agreement should be construed to require CDSS to comply with obligations that no longer exist
6 in the statutes or regulations cited, and the parties agree that this Agreement will not provide an
7 independent basis to enforce any such obligations.

8 8. The parties have entered into this Agreement to resolve with finality all pending
9 claims between them and to avoid the time and expense of litigation.

10 9. The parties agree that this Agreement is the product of mutual negotiation and
11 preparation, and accordingly, shall not be deemed to have been prepared or drafted by either
12 party. The parties further agree that any court seeking to interpret it should construe the
13 Settlement Agreement as the product of mutual negotiation and preparation.

14 10. In consideration of the settlement of this action, the parties agree to suspend
15 litigation, and Higgins agrees to dismiss the action with prejudice on January 30, 2003. The
16 parties agree that the court may retain jurisdiction of this case, so that any disputes concerning
17 compliance may be brought under this action until two years after court approval of this
18 Settlement Agreement, and at that time, any additional action concerning enforcing the terms of
19 the settlement must be brought pursuant to a new action.

20 11. If Higgins' counsel has reason to believe CDSS is not complying with the terms of
21 this Settlement Agreement and Order, counsel shall inform CDSS's counsel, and the parties shall
22 attempt to resolve the issue informally before pursuing a judicial remedy.

23 12. The terms set forth here constitute the entire agreement between the parties in respect
24 to this proceeding and are not subject to modification except by a writing signed by both parties
25 or the parties' counsel of record.


26 13. This Settlement Agreement does not represent an admission by either party of the
27 liability or non-liability of CDSS as alleged in the Petition for Writ of Mandate (C.C.P. § 1085)
28 and Complaint for Declaratory and Injunctive Relief.

1 14. Prior to the execution of this Settlement Agreement, both parties apprized themselves
2 of sufficient relevant data to make an informed decision to enter into this agreement.

3 15. The parties enter into this Settlement Agreement freely and voluntarily having
4 consulted and been advised by counsel. Counsels of record for both parties have full authority to
5 execute this Settlement agreement on their behalf. This Agreement may be executed in one or
6 more counterparts.


7 IT IS SO STIPULATED.

8 DATED: 10/24/02


CAROLE B. SHAUFFER
Attorney for Petitioner/Plaintiff,
Reverend Frank Higgins

BILL LOCKYER, Attorney General
of the State of California
FRANCES T. GRUNDER
Supervising Deputy Attorney General

14 DATED: 10/24/02


BEVERLEY R. MEYERS
Deputy Attorney General
Attorneys for Respondents/Defendants
Rita Saenz, Director of California Department
of Social Services and
California Department of Social Services

ORDER

The terms of the above-stipulated Settlement Agreement are hereby ORDERED.

22 DATED: OCT 29 2002

JAMES J. McBRIDE
JUDGE OF THE SUPERIOR COURT

24 HIGGINS\settlementagrver2

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EXHIBIT A

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814

**REASON FOR THIS TRANSMITTAL**

- State Law Change
 Federal Law or Regulation Change
 Court Order
 Clarification Requested by One or More Counties
 Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
 ALL CHILD WELFARE SERVICE
 PROGRAM MANAGERS
 ALL JUVENILE COURT JUDGES
 ALL CHIEF PROBATION OFFICERS

SUBJECT: ASSESSMENT OF RELATIVES AND NON-RELATIVE EXTENDED
 FAMILY MEMBERS FOR APPROVAL AS FOSTER CARE PROVIDERS;
 PLANS OF CORRECTION

REFERENCE: All County Letters #01-85, #02-58, and #02-59

The purpose of this letter is to provide county placing agencies with newly developed forms required for the assessment and approval of relative and non-relative extended family members (NREFM) with whom dependent children and wards may be placed. Current law requires that relative or NREFM homes approved for placements must meet the same standards as licensed homes. AB 1695 mandates that the standards used to evaluate and grant or deny approval of a relative or non-relative extended family member's home shall be the same as the core standards for licensing foster family homes, including the use of Documented Alternative Plans, Criminal Records Clearances and Exemptions, and the standards contained in Article 3 of Title 22, Division 6, Chapter 9.5 of the California Code of Regulations ("Article 3").

42 USC 671(a)(10) requires the State to establish a State authority or authorities to be responsible for establishing or maintaining standards for foster family homes and child care institutions and apply those standards to any foster family home or child care institution receiving funds under Titles IV-E or IV-B. In order to claim Federal financial participation for Title IV-E eligible children placed in approved or licensed foster family homes, the State must license or the counties must approve all foster family homes according to the same standards. This means that the counties must approve all unlicensed foster family homes using the standards identified in Division 31 at MPP subsection 31-445.3 which incorporates Title 22 Chapter 9.5, Article 3, of licensing regulations. The Federal Department of Health and Human Services has expressed concerns that since foster family homes may be approved by counties or other agencies within the State, the State needs to ensure that all agencies are applying licensing standards applicable to licensed foster family homes.

Accordingly, as set forth in County Fiscal Letter 01/02-61, counties may not claim costs associated with a child's placement in the home of a relative or NREFM as Title IV-E expenditures until the home is approved under these standards.

Assessment Forms

Therefore, beginning no later than [date to be determined after Federal approval of this ACL], the attached forms are to be used in assessing relative and NREFM homes to ensure that licensing/approval standards are consistently assessed, and approvals are granted or denied accordingly. These forms are to be used in the initial assessment of a relative/NREFM prior to placement, for the annual reassessment per ACL 02-59, and also for assessing previously approved homes that have not yet been reassessed per ACL 02-58. There are three forms attached: Relative or Non-Relative Extended Family Member Caregiver Assessment, Checklist of Health and Safety Standards for Approval of Family Caregiver Home, and Approval of Family Caregiver Home. For each item on an assessment form there is a reference to the relevant section of Article 3. Counties may choose to seek additional information at the time of assessment, but approval cannot be granted or denied on any basis other than the licensing/approval standards specified in Article 3.

CWS/CMS

Copies of the completed approval forms are to be maintained in the child's on-line case record in CWS/CMS. A single word-perfect document template is being constructed and detailed instructions on how and where to insert the forms will be forthcoming.

Correctable Deficiencies/Plan of Correction

For the initial approval assessment: When there are no children in care, if correctable deficiencies are noted, approval pending correction of those deficiencies can be given. However, in order to properly claim Title IV-E funding for the placement of a child in the home, the worker must first verify that the cited deficiencies have been corrected. If there are children in care at the time of initial assessment, no approval may be given unless all standards for approval are verified by the worker. Title IV-E funding cannot be claimed until this is done.

For reassessment purposes when there are children in care and correctable deficiencies are noted, the home can be reapproved with a corrective action plan put in place at the same time as the reapproval is given, provided the deficiencies cited do not present imminent danger to children in care. The worker must later verify that the prescribed corrective action was taken within the prescribed time period. If so verified, and if the re-approval is made within thirty days, the relative/NREFM placement would continue to be eligible for Title IV-E funding. If the deficiency would present imminent danger to children in care, corrective action must be taken immediately. An example of a deficiency that would present imminent danger would be an unlocked gun. The gun would need to be immediately locked or removed and verified by the worker. Instructions regarding deficiencies and corrective action plans are attached to the checklist of health and safety standards. If immediate correction of a deficiency which

presents imminent danger to children is not made and verified by the worker, the child must be removed.

If you have questions about this ACL, please contact Tery Dalzell, Kinship Policy and Support Unit, at (916) 324-8257.

Sincerely,

SYLVIA PIZZINI
Deputy Director
Children and Family Services Division

Enclosures

Relative or Non-Relative Extended Family Member Caregiver Assessment

If any statements below are answered No, the caregiver cannot be approved. The worker should assess whether the provision of reasonable assistance or additional services to the caregiver would enable the caregiver to properly respond to the child(ren)'s needs and the child(ren)'s health and safety. If the worker later reassesses the caregiver and determines that conditions supporting the No answer have changed sufficiently to answer Yes, approval may be given at that time.

Responses to the following statements have been assessed by the undersigned.

1. The caregiver has been provided a summary of State home approval regulations and is capable, having sufficient physical and mental health, to meet these requirements for the care and supervision appropriate to the type of child(ren) to be served. [89317]

Yes No

Comments: _____

2. The caregiver is aware of the child(ren)'s immediate medical, psychological, and educational needs and is able to respond to those needs. [89378]

Yes No

Comments: _____

3. The caregiver understands State child abuse and neglect laws and agrees to report any circumstances indicating the child(ren) has been abused or neglected [89361].

Yes No

Comments: _____

4. The caregiver can provide the children opportunities for and encouragement in participation in group sports, leisure time, family, school and daily living activities [89379(a)].

Yes No

Comments: _____

Caregiver Assessment

CHILD: _____

PROPOSED CAREGIVER: _____

5. The caregiver is able to care for the child(ren) in a healthy and safe way [§89378].
 Yes No

Comments: _____

6. The caregiver will ensure that only positive discipline practices which promote the health and well being of the child(ren) are used in the home, and will not use nor allow any form of discipline that violates the child's personal rights [§89372].
 Yes No

Comments: _____

7. The caregiver understands and agrees to maintain the child's records, including the placement agreement, health and educational records and written consent for medical/dental treatment [§89370].
 Yes No

Comments: _____

8. The caregiver agrees to report all changes in household composition, or change in the residence or mailing address, or absence of the caregiver from the home of more than 48 hours [§89370].
 Yes No

Comments: _____

9. The caregiver agrees to post emergency telephone numbers, discuss emergency situations with children and practice emergency procedures every 6 months [§89323].
 Yes No

Comments: _____

Caregiver Assessment

CHILD: _____

PROPOSED CAREGIVER: _____

10. The caregiver agrees to report any accidents, injuries or incidents that threaten to harm the physical or emotional health or safety of the child [§89361].

Yes No

Comments: _____

11. The caregiver has been provided with a copy of the child's personal rights and understands them and agrees to ensure that all members of the household will abide by them [§89372].

Yes No

Comments: _____

12. The caregiver agrees to ensure direct care and supervision is provided to meet the child's needs during participation in those activities that are sponsored by third parties [§89379(b)].

Yes No

Comments: _____

13. The caregiver will provide at least three nutritious meals daily to meet the child's dietary needs. [§89376].

Yes No

Comments: _____

14. The caregiver will ensure all transportation for children is provided in vehicles in safe operating condition, by a driver complying with all applicable laws [§89374].

Yes No

Comments: _____

Caregiver Assessment

CHILD: _____

PROPOSED CAREGIVER: _____

Assessment Summary:

The relative/non-relative extended family member has the ability and capacity to provide care and supervision to meet the child's/children's needs.

Yes No

Signature of County CWS or Probation Worker

Phone Number

Date

CHILD: _____

PROPOSED CAREGIVER: _____

**RELATIVE or NREFM
CAREGIVER DECLARATION AND AGREEMENT**

I/We declare that:

1. I/We have been provided with a summary of the state regulations regarding the approval and operation of a relative foster home and agree to abide by them. _____ (Initial)
2. I/We agree to cooperate with the county in the maintenance of caregiver standards.
3. I/We have been provided with a copy of the child's personal rights and understand them and agree to ensure that all members of the household will abide by them.
4. I/We agree to provide for the special needs of any child placed in our care, including but not limited to:
 - To provide the services identified in the child's Needs and Services Plan and, if applicable, Transitional Independent Living Plan (§89378(b) and §89387.2) _____ (Initial)
 - If the child is a minor parent, to provide direct care and supervision of the child of the minor parent whenever the minor parent is at school or otherwise unavailable/unable to care for the child (§89378) _____(initial)
 - If the child has a disability, to make necessary specific provisions as required to protect and assist the child and maximize the child's potential for self-help (§89387). _____ (initial)
 - If the child is under age 10 or is developmentally disabled, mentally handicapped, or needs special care and supervision, any pools or open body of water will be secured as required by §89387(d). _____ (Initial)

I/We have not and will not make any false or misleading statements associated with application for approval, including information regarding the caregiver, family members, family home, or any of the services to be provided in the home

Caregiver Name

Date

Caregiver Name

Date

Checklist of Standards for Approval of Family Caregiver Home

Pursuant to Division 31 MPP 31-445.3, in order to be approved, all Foster Care Homes must meet the following standards, set forth in Title 22, Division 6, Chapter 9.5, Article 3.

Section	STANDARD	YES	NO	DAP	CAP
89317	APPLICANT QUALIFICATIONS				
89319	CRIMINAL RECORD CLEARANCE REQUIREMENT				
89323	EMERGENCY PLAN				
89361	REPORTING REQUIREMENTS				
89370	CHILDREN'S RECORDS				
89372	PERSONAL RIGHTS				
89373	TELEPHONES				
89374	TRANSPORTATION				
89376	FOOD SERVICE				
89378	RESPONSIBILITY FOR PROVIDING CARE & SUPERVISION				
89379	ACTIVITIES				
89387	BUILDINGS AND GROUNDS				
89387.1	OUTDOOR ACTIVITY SPACE				
89387.2	STORAGE SPACE				
89388	COOPERATION & COMPLIANCE				

CRIMINAL BACKGROUND CHECKS

	OLETS	GWS/OMS Search	Live Scan Appointment	LIVE SCAN	DOJ GACI	FBI Requested	FBI Received	Exemption Requested	Exemption Granted	Exemption Denied	DOJ RAP Backs Requested
Caregiver:											
Other Adults											

DEFICIENCIES AND PLANS OF CORRECTION

When a violation of health and safety standards is observed, the county worker has the responsibility to determine the length of time by which a correction must be made and to provide the relative with reasonable assistance in meeting that standard. The basic factors to be considered in making this assessment are the potential consequences to a child placed in the home and the immediacy of the need to correct.

The types of deficiencies are as follows:

1. **Immediate Impact.** Deficiencies that, if not corrected, would have a direct and immediate risk to the health, safety or personal rights of the foster child. If placement is imminent, correction **MUST BE MADE** prior to placement of the child.
2. **Potential Impact:** Deficiencies that without correction could become a risk to the health, safety or personal rights of the child.

Examples of Immediate Impact Deficiencies:

For initial approval:

1. Health Related: unlocked medications, inappropriate storage of medications.
2. Food Service: food contaminated with mold, fungus or bacteria; bloated or ruptured canned foods; infestation of insects or vermin; unsanitary conditions in food preparation areas that present immediate health hazard; storing of food next to or with toxic substances.
3. Building and Grounds: no fence or approved cover for bodies of water; broken stair or stair railings; poisons, toxic substances, firearms in areas accessible to children; unlit stairwells used by children.
4. Fixtures, Furniture, Equipment and Supplies: toilet not in working condition, garbage accessible to children, unsafe fireplace or heaters that are in use, unsafe water temperature, condition of bedding or towels is unsanitary, furniture is broken and could cause injury if used.
5. Criminal record Clearance and Child Abuse Index Check: failure to obtain a CLETS clearance and submit a fingerprint or Criminal Record Clearance and Child Abuse Index Check for those individuals whom have frequent and routine contact with the child(ren) in care.

For re-assessment, all of the above, and:

1. Personal Rights: abuse, neglect, inappropriate use of restraints, the use of corporal punishment, and similar violations having a direct negative impact on either the physical or emotional well-being of children in care.
2. Health Related Services: storing mislabeled, unlabeled, outdated or discontinued medications; failure to ensure that needed medical care is provided to those in care.
3. Food Service: failure to maintain enough food to meet the needs of the children for the next 24 hours.
4. Care and Supervision: child requires a level of care that cannot be met by the caregiver without the provision of additional supports or services.
5. Supplies: failure to maintain enough basic hygiene items to meet the needs of the child(ren).

Examples of Potential Impact Deficiencies:

For initial approval:

1. Food Service: failure to clean dishes and utensils.
2. Buildings and Grounds: conditions that may have a negative impact on children in care if not corrected, such as multiple conditions that indicate an overall deterioration of the home; widespread neglect of maintenance; unsanitary living and food preparation areas.
3. Furniture, Fixtures, Equipment and Supplies: furnishings should be considered as deficient only when they are clearly damaged to the extent they are not functional, (e.g., a tear in the seat of a chair vs. exposed springs); no operable sink or shower; inadequate linens.

For re-assessment, all of the above, and:

1. Reporting Requirements: Failure to notify the Department regarding incidents of abuse, neglect, death, injury, etc. as required by §89361.
2. Record Keeping: Failure to maintain children's records as required by §89370.

Plan of Correction

When a child welfare worker has determined that a deficiency exists, the proposed caregiver and the worker will discuss each deficiency and develop a plan for correcting each deficiency. If the deficiency is not corrected during the visit, then the plan of correction must be in writing, with a copy provided to the caregiver, and shall include at least the following information:

1. Citation of the regulation section that is violated.
2. Description of the nature of the deficiency.
3. The actions to be taken by the applicant and the assistance to be provided by the County.
4. The date by which each deficiency shall be corrected.
5. The phone number of the county office responsible for approval of the home.

WHEN THERE ARE CHILDREN IN THE HOME, THE WORKER MUST REQUIRE IMMEDIATE CORRECTION OF A DEFICIENCY IF THE DEFICIENCY WOULD POSE AN IMMEDIATE THREAT TO THE HEALTH AND SAFETY OF CHILDREN. UNDER THESE SAME CIRCUMSTANCES, IF THERE ARE NO CHILDREN IN CARE, AND PLACEMENT IS IMMINENT, CORRECTION SHOULD BE WITHIN 24 HOURS OR LESS, AND BEFORE PLACEMENT IS MADE. OTHERWISE, THE DATE FOR CORRECTING A DEFICIENCY SHALL NOT BE MORE THAN 30 CALENDAR DAYS FOLLOWING THE DATE OF THE VISIT, UNLESS THE WORKER DETERMINES THAT THE DEFICIENCY CANNOT BE CORRECTED IN 30 CALENDAR DAYS. IN THIS CASE, THE WORKER MUST DETERMINE AN APPROPRIATE COMPLETION DATE. *TITLE IV-E IS NOT AVAILABLE UNTIL THE MONTH IN WHICH THE CORRECTIONS ARE COMPLETED AND THE HOME FULLY MEETS THE STANDARDS.*

THE CORRECTIVE ACTION PLAN SHALL SPECIFY CORRECTIVE ACTIONS WHICH MUST BE TAKEN WITHIN 30 DAYS AND THE DATE ON WHICH THE CORRECTIONS WILL BE COMPLETED.

In determining the date for correcting a deficiency, the worker should consider the following:

1. Whether there are children in care.
2. The potential hazard presented by the deficiency.
3. The availability of equipment or personnel necessary to correct the deficiency.
4. The estimated time necessary for delivery and installation of any necessary equipment.

If a written plan of correction is used, the worker is responsible for ensuring corrections have been completed within the required timeframes.

Checklist of Health and Safety Standards for Approval of Family Caregiver Home

Pursuant to Division 31 MPP 31-445.3, in order to be approved, all Foster Care Homes must meet the following standards, set forth in Title 22, Division 6, Chapter 9.5, Article 3:

STANDARDS PERMITTING ALTERNATIVE PLANS	Yes	No	N/A	*Alternative
<i>The following statements must be answered YES, unless not applicable or an exception is granted, to approve the home for placement.</i>				
1. Adequate bedroom space is provided: [§89387(a)]				
(a) No more than 2 children share a bedroom.				
(b) No sharing a bedroom by children of opposite sex unless each child is under 5 years of age.				
(c) Each child has individual bed with clean linens, pillow, blankets, mattress in good repair.				
(d) Each bedroom has sufficient portable or permanent closet and drawer space for each child.				
(e) The child does not share a bedroom with an adult unless the child is an infant.				
(f) There are no more than 2 infants and no more than 2 adults sharing the same bedroom.				
(g) Infant has age-appropriate, safe/sturdy bassinet or crib.				
(h) No room commonly used for other purposes or as a public or general passageway to another room is used as a bedroom.				
(i) Easy passage is allowed between beds and room entrance.				
2. The home has telephone service (may be waived if telephone access is available). [§89373]				

STANDARDS NOT PERMITTING ALTERNATIVE PLANS	Yes	No	N/A	»CAP
<i>The following statements must be answered YES, unless not applicable or a corrective action plan has been agreed upon. # indicates a standard for which "not applicable" is an unacceptable response.</i>				
3. The home appears to be clean, safe, sanitary and in good repair. [§89387(b)]			#	
4. Indoor and outdoor halls, stairs, ramps, and porches are free of obstructions and hazards [89387(c)]			#	
5. Home contains at least 1 toilet, sink, tub or shower maintained in safe, clean operating condition. [§89387(i)]			#	
6. Bunk beds of more than two tiers must not be used. [§89387(j)]				
a. Upper tier has bed rails. [§89387(j)]				
b. Children under five years of age or those who are unable to climb into or out of the upper tier unassisted shall not be permitted to use the upper tier. [§89387(j)]				
7. Home is maintained at comfortable temperature at all times. [§89387(k)]			#	

8. Child's safety is ensured in homes with fireplaces, open forced heaters and woodstoves. [§89387(l)]				
9. Lamps and necessary light is provided in all rooms and other areas to ensure comfort and safety of persons in the home. [§89387(m)]			#	
10. Home has indoor sprinkling system or functioning smoke detector installed in the hallway(s) of each sleeping area audible in each bedroom or sleeping room. [§89387(p)]			#	
11. Hot water from faucets is delivered at a safe temperature. [§89387(n)]			#	
12. Medicines, disinfectants, cleaning solutions, poisons, firearms and other dangerous items are stored where inaccessible to children. [§89387.2]			#	
13. Storage areas of firearms and other dangerous weapons are locked or in lieu of locked storage the applicant is utilizing trigger locks or has removed and locked the firing pin/s separately from the firearm/s. Ammunition is stored and locked separately from firearms. [§89387.2]				
14. Solid waste is stored, located and disposed of in a manner that will not permit the transmission of communicable disease or of odors, create a nuisance, or provide a breeding place or food source for insects or rodents. [§89387(o)]			#	
15. Each sleeping room has at least one operable window or door that ensures safe, direct, emergency exit to the outside. If security window bars are used, the window is considered operable only if equipped with safety release devices. [§89387(q)]				
16. Yard or outdoor activity space is provided free from hazards to life and health. [§89387.1]			#	

- * Alternative: Documented Alternative Plan must be attached.
- » Correctable Deficiencies: Corrective Action Plan must be attached.

I certify that the above-named caregiver's home meets the standards for approval as described in this form.

Signature (County CWS or Probation Worker)

Date

Approval of Family Caregiver Home

Pursuant to the provisions of WIC Section 319 I certify that I assessed

_____ Name

_____ Address

the maternal paternal NREFM _____ Relationship to child

of _____ Child's Name SS# DOB

1. CRIMINAL RECORD/ PRIOR ABUSE CLEARANCES

Criminal Record and Child Abuse records have been checked for the caregiver(s), all adults living in the home or on the premises, and other non-exempt person(s) who have routine contact with the child.

- ALL ADULTS CLEARED (See attached SOC _____)
- NOT CLEARED

2. CAREGIVER QUALIFICATIONS

- The above named prospective caregiver has been assessed as able to care for and supervise the above named child(ren) and provide for the child's special needs; SOC _____ Caregiver Assessment, completed and attached.
- CAREGIVER NOT QUALIFIED.

3. SAFETY OF THE HOME AND GROUNDS

- An on-site inspection of the home's building and grounds was conducted on

_____ by _____
(Date)

and the home is clean, safe, sanitary and in good repair for the safety and well-being of the child(ren), meeting required licensing/approval standards set forth in MPP 31-445.3; SOC _____, Checklist of Health and Safety Standards, completed and attached

- HOME DOES NOT MEET APPROVAL STANDARDS.

Child's Name _____

SS # _____ DOB _____

4. CHILD'S PERSONAL RIGHTS

Information regarding the personal rights of foster children has been provided to the prospective caregiver who has agreed to provide a copy of that information to any child (or the child's authorized representative where applicable) placed in his or her home.

5. COMPLETION OF ORIENTATION/TRAINING

The caregiver has received a summary of State approval regulations and completed the orientation provided by the county.

I certify that the above named caregiver meets the standards for relative or non-relative extended family member home approval as of _____ Date

I certify that as of _____ the above named caregiver meets the standards for relative or non-relative extended family member home approval pending completion of the Plan of Correction.

Plan of Correction completed on _____ Date

Plan of Correction not completed by agreed to due date.

I certify that the above named caregiver DOES NOT meet the standards for relative or non-relative extended family member home approval as of _____ Date

Assessment Approval Worker's Signature

Date

Supervisor's Signature

Date

EXHIBIT B

Tentative Agreement For State Monitoring and Enforcement

Short Term Plan, commencing upon Court approval of the proposed Stipulation, and Completed on 12/31/02:

The Department will conduct an online review of 620 cases of actual relative placements through the child welfare services case management system, to examine compliance with relative home approval requirements. The 620 cases will be allocated among the 58 counties in proportion to the number of relative placements statewide. The Department will identify counties with significant deficiencies, and will provide those counties with technical assistance to address those deficiencies. Included in the case sample will be probation placements.

Long term Plan, commencing on 1/1/03, and continuing until integrated into federally approved Departmental wide monitoring systems pursuant to A.B. 636, and upon consultation with the Youth Law Center. It is the intent and expectation of the Department, that the Long Term Plan will not be substantially or substantively altered as a result of integration into Departmental wide monitoring systems pursuant to A.B. 636:

The Department will conduct an on-line review of a statistically valid sample of relative placements in each of the 58 counties annually through the child welfare services case management system, to examine compliance with relative home approval requirements. The Department will identify counties with significant deficiencies, and will require counties so identified to develop a corrective action plan and to come into compliance. The Department also shall provide those counties with technical assistance. Included in the case sample will be probation cases.

EXHIBIT C

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814

REASON FOR THIS TRANSMITTAL

- State Law Change
 Federal Law or Regulation
 Change
 Court Order
 Clarification Requested by
 One or More Counties
 Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
 ALL CHILD WELFARE SERVICE
 PROGRAM MANAGERS
 ALL JUVENILE COURT JUDGES
 ALL CHIEF PROBATION OFFICERS

SUBJECT: ASSESSMENT OF RELATIVES AND NON-RELATIVE EXTENDED
 FAMILY MEMBERS FOR APPROVAL AS FOSTER CARE PROVIDERS;
 APPEAL OF DISAPPROVAL

REFERENCE: All County Letters #01-85, and (Proposed ACL regarding assessment forms)

The purpose of the letter is to notify county placing agencies of the settlement agreement reached in Higgins v Saenz. Provisions of the settlement reached between the California Department of Social Services and the plaintiff affect the manner in which counties assess potential relative caregivers and non-related extended family members (NREFM) for placement approval.

According to the terms of the settlement, the following procedures shall be implemented [specific date will be inserted to be within 7 days of date of letter]

1. The counties must assess for compliance with approval standards any grandparent, aunt, uncle, or adult sibling who expresses an interest in the placement, or any other relative the county is considering for placement. If any of these relatives are subject to denial of approval based on criminal convictions or child abuse registry information, the County may deny the approval without performing the home assessment. The assessment must occur within 30 calendar days, or by the date of the disposition hearing, whichever is sooner.
2. Any relative who has been denied approval based on a failure to meet approval standards has a right to grievance procedures set forth in Regulations at MPP 31-020 et. seq. If the County determines that a given relative's home is not approvable, or if the County rescinds an existing approval, the County shall provide that relative with written notice of the reason(s) for the denial and of their right to grievance review.

This letter is also to remind Counties of their responsibility to conduct complaint investigations/visits as appropriate of approved homes. All abuse and neglect complaints must be referred to 24-hour emergency response line for investigation. All relative caregivers continue to have access to the current existing complaint processes. This includes contacting the Ombudsman's Office of the California Department of Social Services at 1-877-846-1602 or fosteryouthhelp@dss.ca.gov. The Ombudsman acts as an independent forum for the investigation and resolution of complaints made by or on behalf of children placed in foster and makes appropriate referrals.

Further, Counties are reminded to document any reasonable assistance given to relative caregivers or NREFMs in the course of the approval process.

Counties will be notified when the regulations necessary to implement the provisions of the stipulated agreement have been completed.

If you have questions about this ACL, please contact Tery Dalzell, Kinship Policy and Support Unit, at (916) 324-8257.

Sincerely,

SYLVIA PIZZINI
Deputy Director
Children and Family Services Division

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Higgins v. Saenz, et al.**

No.: **CPF-02-501937**

I declare:

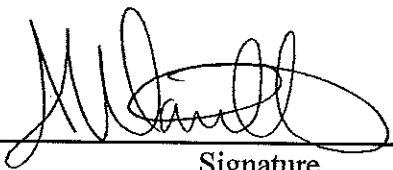
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, California 94102-7004.

On October 25, 2002, I served the attached **SETTLEMENT AGREEMENT AND ORDER** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California, addressed as follows:

CAROLE B. SHAUFFER
Youth Law Center
417 Montgomery Street, Suite 900
San Francisco, CA 94104

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 25, 2002, at San Francisco, California.

A. WARITH
Declarant



Signature