

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: 98-7137-CIV-MORENO

VALERIE WARD, et al.,

Plaintiffs,

vs.

KATHLEEN KEARNEY, in her official
capacity as Secretary, Florida
Department of Children and Family
Services and PHYLLIS SCOTT, in her
official capacity as District
Administrator, District 10, Florida
Department of Children and Family
Services,

Defendants.

SETTLEMENT AGREEMENT

I. INTRODUCTION AND SUMMARY

The complaint initiating this lawsuit, filed on October 20, 1998, alleges that the State official defendants have violated constitutional standards by failing to provide safe placements and protection from harm to Broward County children who come under State supervision as a result of abuse, neglect or abandonment in their familial setting. By order dated March 17, 1999, the Court granted conditional class certification.

In January of 1999, the new Governor of the State of Florida, Jeb Bush, and the person he selected to lead the Department of Children and Family Services, Judge Kathleen A. Kearney, appeared before this Court and acknowledged that the system of foster care in Broward County needed improvement. The Governor and the nominated Secretary pledged to implement emergency measures to address the deficiencies identified by them, and the State requested that the Court allow the State a limited period of time to implement its own remedial plan. The Court granted the State's request.

A six-month emergency relief plan was designed by the Secretary's staff with input from the representatives of the plaintiff class. Progress in achieving the objectives of the emergency relief action plan was reported to the Court and to the plaintiff class, with the most recent report being filed on July 9, 1999.

As the six-month period drew to a close, the parties began discussions to determine whether the successes achieved during the initial six months could be merged with longer range plans of the State officials, and with the ideas of the plaintiff class, to devise a foster care system, consistent with the legislative intent and purpose of Florida Statutes, Chapter 39, to ensure proper protection and care of children under Department supervision. The discussions were successful and led to this Settlement Agreement (sometimes referred to as "Agreement").

Part II of this Settlement Agreement describes the plan agreed to by the parties to protect and care for children under Department supervision. The plan addresses many components and stages of the foster care system in District 10. The parties expect that good faith efforts to successfully implement each of the components and stages of foster care will, in totality, ameliorate, to the extent possible, the type of problems which plaintiffs allege led to the filing of this lawsuit. It is expected that good faith efforts to implement will reduce, to the extent possible, incidences of child-on-child sexual abuse and physical abuse in foster care, overcrowding of foster homes, runaways and missing foster children, truancy and educational failure, and multiple foster care placements.

The principles described in the plan will be applicable, through appropriate contractual provisions to foster parents and to community organizations assuming responsibility for foster care and related services in compliance with Fla. Stat. § 409.1671. These principles will be implemented by community lead agency organizations in accordance with the terms of their contracts with the Department and will be enforced by the Department.

The parties recognize the importance of flexibility in implementing a successful plan. It is difficult to predict with certainty the number of children who will enter the system in the future, or their special needs. The application of the plan's principles to the delivery of services by, and in, the community will present new challenges to private providers as well as to State officials. The Secretary retains the authority to modify the foster care delivery system as deemed necessary to meet the needs of children. This Agreement, however, will also allow the plaintiff class an ample opportunity to offer suggestions for improving the system, and the views of the class may enhance sound decision-making by State officials. It is recognized that some components of the plan will prove to be more successful than others, and the built-in flexibility will permit modifications that will enhance the effectiveness of the program.

Plan flexibility will be realized in two separate, but complementary ways. First, an integral component of the plan is the State-directed quality assurance and quality improvement ("QA") program. This program, as explained in Part III, will regularly monitor plan implementation and search for methods for improving performance. Second, as explained in Part

IV, regular meetings will be conducted between Department officials (including a lead agency representative, in the event a lead agency under Fla. Stat. § 409.1671 is in place in Broward County) and representatives of the plaintiff class to discuss the effectiveness of plan implementation; and a Department official will serve as a liaison to the plaintiff class and will be available to assist in the resolution of emergency issues at any time.

Part V describes the procedures for resolving any differences that might arise between the parties in the course of plan implementation. A detailed procedure for voluntary resolution of disputes is established, and litigation will be utilized only as set forth in Section V to resolve serious concerns regarding the safety of children which cannot be resolved by alternate voluntary methods. As described in Part VI, it is envisioned by the parties that successful plan implementation and cooperative efforts in problem solving will result in the end to court jurisdiction and final dismissal of litigation on the eighteen month anniversary of Court approval of the Settlement Agreement; provided however, that in no event shall any commitments made herein by the Department requiring an expenditure of state funds extend beyond the current fiscal year of June 30, 2000.

The defendants acknowledge their ongoing constitutional obligation to protect and care for children under the custody of the Department. However, the parties recognize that nothing in this agreement obligates the Legislature to appropriate funds for this agreement or establish any new programs. By signing this agreement defendants do not admit that the inclusion of each service provided to the children is necessarily required to meet minimum constitutional standards.

II. PLAN FOR THE PROTECTION AND CARE OF CHILDREN IN DISTRICT 10 FOSTER CARE

The plan for the protection and care of children in District 10 foster care is multi-faceted, and is based on a series of basic principles of prevention and care, aspirational goals and expected outcomes of good faith efforts to implement all components of the plan. The description of the plan in this document will be divided into categories which the parties believe, in combination, establish an effective program for the protection and care of children. Many of the separately described components of the program overlap in practice, and no component can be viewed in isolation from the others. The combination of all components is expected to achieve the result desired by the parties. The categories to be used for description of the plan are the following: system of care; child safety; quality of care; health; education; permanency; independent living; child welfare work force; and management support.

SYSTEM OF CARE

In responding to allegations of child abuse, neglect or abandonment, the overarching objective of Department officials is protecting and promoting the health and safety of the child.

1. The Department is responsible for providing an appropriate system of care for children who enter the foster care system. District 10 will conduct an assessment of the need for out-of-home care resources in District 10 for the upcoming three years. The purpose of the assessment is to examine relevant factors so it is a "needs" driven system. The District will also assess the need for different levels of care. The assessment also will consider any expected increase in the number of children needing out-of-home care as a result of other planned changes to the child protection program, such as the involvement of the Broward County Sheriff's Office. The District will use the assessment to project the need for foster homes and specialized placements for the next three years.
2. The Department will make good faith efforts to develop and implement the number and type of foster homes and other out-of-home care services that are shown to be needed by the assessment. This may be part of a Statewide effort to recruit foster homes. Additional financial resources have been made available to District 10 for the 1999-2000 fiscal year to meet the out-of-home care needs of children under the District's supervision as described in Defendants' Status Report filed July 9, 1999. The local Alcohol, Drug Abuse and Mental Health ("ADM") office and the Family Safety office will collaborate in the development of initial and on-going screening protocols so that residential treatment programs that provide intensive mental health interventions are provided and monitored to the extent possible. As explained in the July 9, 1999, Status Report, the 1999-2000 funding allocation to District 10 for out-of-home care represents an increase of more than 200 percent above the level of funding originally allocated in 1998-1999. At the same time, the parties recognize that the success of this program does not rest entirely with the State officials, since foster homes are provided by the community. Representatives of the plaintiff class pledge to extend their good faith efforts to provide technical assistance, if asked by defendants, without expense to plaintiffs, and community support to help expand the number of various types of out-of-home placements that are available for children under Department supervision.

CHILD SAFETY

3. Department officials, and all contracting agencies or organizations that provide emergency response services in child protection cases will comply with applicable State and federal law, including the requirement that the health and safety of the child be the paramount concern, that a judicial review hearing to plan for the child's permanency is conducted within 12 months of the child's placement in shelter care, and that reasonable efforts be made to maintain (or return) the child safely in his/her home.

4. Consistent with the legislative intent and purpose of Florida Statutes, Chapter 39, it is the goal of District 10 to ensure permanent placement with the biological or adoptive family for every child in foster care. When removal is necessary, the District will attempt to place the child in an approved relative home, licensed foster home, adoptive home, appropriate residential program, or independent living program that provides a stable and safe living arrangement for the child, as determined by the court.

5. As required by the Florida Administrative Code, Rule 65C-13.010(5)(g), the counselor will visit with the substitute care parents and the children in their care at least monthly in their home. For each child, his/her case plan will identify the appropriate number of visits that should be made by the counselor each month based on the assessment of the child's needs. It also is recognized that, in some factual circumstances, more frequent visits are required to ensure the safety and well-being of the child. Compliance will be monitored by the District Administrator on a monthly basis. Appropriate action will be taken for non-compliance. Compliance will also be monitored quarterly by Q/I.

6. As required by Chapter 409 and its implementing rules, the Department requires background screening -- including local and Statewide criminal and juvenile records -- through the Florida Department of Law Enforcement ("FDLE") on all placement household members and on any persons made known to the Department who are frequent overnight visitors in the home, babysitters, and unlicensed day care providers, in accordance with Department policy. The background screening will include, if available, federal and state criminal history, juvenile justice history, CIS, ICWSIS, and SACWSIS history, criminal and state civil records check. In addition to the FDLE background check, District 10 conducts a study of the proposed care giver and the home, including but not limited to, an assessment of the physical environment of the home, interviews, and a records check through the Department's automated abuse information system to determine the suitability of the placement for the child.

7. Child safety is further advanced by a new statewide operating procedure (CFOP 175-38) regarding reunification of disabled children and children five years of age and under. The statewide procedure requires staffing or case review involving the counselor and the next two levels of supervision before a decision is made to reunify the child with the parents. The staffing or case review evaluates nineteen separate factors concerning the past and present history of the child to promote the best interest of the child with the priority of safety and well-being. All decisions to return a child home require written approval of the Program Operations Administrator or a similar managerial position in a private provider under Fla. Stat. § 409.1671.

8. The Department will use its good faith efforts to provide day care to children in custody based on the assessment of the child, the child's need, and consistent with the availability of resources.

9. District 10 continues to have flexible spending authority to utilize out-of-home care funds to divert children from foster care when their safety can be assured in their family setting.

District 10 will establish a clear protocol with BSO to ensure a mechanism for appropriate use of this authority. The "Contracted Services" budget category will be reallocated in FY 00/01 to achieve an equitable distribution of resources to all districts across all categories of child protection funding.

QUALITY OF CARE

The parties have identified the following components that predict the safety and high quality of care to be provided to children under State supervision, beginning with the entry of the children to the State system and continuing through the necessary supports for foster parents.

10. Multi-disciplinary Assessment.

2
The Department will use the statewide operating procedure, entitled: Family Assessment, ("CFOP 175-41"), establishing minimum standards for assessment of families involved with the Department's Family Safety program. In addition, all children entering care will receive a comprehensive assessment as defined in Fla. Stat. §39.01(17) and plan within 30 days of initial placement. This will include family history and need for financial assistance, family drug use, mental health, behavior of child, education, any past incidences of child-on-child sexual abuse or perpetration, need for referral for (IEP) Individualized Education Plan, and child development. The assessment shall document and include in the Child Resource Record any incidents of child-on-child abuse that the child was involved in. As early as possible the plan will document how to achieve a legally permanent family for each child.

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Pursuant to the operating procedure, "Family Assessment" begins at initial contact with a family and is continuous throughout the time the family is under supervision. The process involves the counselor and the family and, if appropriate, other service providers, professionals and community support in a joint effort to identify and analyze the family strengths and resources as well as factors that contribute to child safety risks to determine the appropriate actions to take.

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District 10 has expanded its ability to provide initial intervention assessments on children removed from their homes by increasing contracts for Fiscal Year (FY) 99-00. Four private agencies are under contract to provide this service. It is the intent of the Department to have all children entering the system receive appropriate assessments and follow-up services. This expansion of the District's current assessment program is possible under new and broader community mental health services that will be funded for Medicaid recipients beginning no later than December 31, 1999.

11. Separation of Children Presenting Risks to Others.

The District and its contract agencies will evaluate the behavioral background of children under supervision so that children placed do not pose a risk to others. In this regard, the Department has implemented a new statewide operating procedure to address the safety of

7

children and their placements. The operating procedure "The Prevention and Placement of Child Victims and Aggressors Involved in Child-on-child Sexual Abuse, Sexual Assault, Seduction or Exploitation in Substitute Care," CFQP 175-88, is being implemented and will continue to be implemented across Florida and mandates the manner of placement for children identified as victims or aggressors.

The District has instituted and will continue to implement an automated system of tracking all children in care with specific "alerts" on a child's record that identifies if the child is physically assaultive, sexually aggressive, a sexual offender, or a victim of prior sexual assault. The impact of the alert system is to promote child safety and well-being and to avoid inappropriate placements of victims with aggressors.

Additionally, the District will provide foster parents with appropriate information regarding a child's history so the foster parents will be prepared to deal with the specific needs of the child, including, but not limited to, sexual abuse history. The District has implemented and will continue to implement new bilateral service agreements with all foster parents when they are licensed or re-licensed. The bilateral service agreements outline the District's and the foster parents' respective responsibilities to promote cooperation between family service counselors and foster parents to provide a safe and stable living environment for the child.

12. Forensic Medical Assessments and Services.

The District will require appropriate assessment and treatment for children who may be subject to physical or sexual abuse while under Department supervision. The method currently being implemented in District 10 utilizes the Child Protection Team ("CPT") to respond to allegations of physical or sexual abuse of any child under Department supervision. The CPT provides specialized diagnostic assessment, evaluation, coordination, consultation and other supportive services to the Department. A board-certified pediatrician experienced with children who are victims of abuse reviews and will continue to review the recommendations of the CPT.

13. Photographs of Children

Photographs of each child entering emergency shelter or foster care will be maintained in the child's file, and updated annually so long as the child remains in foster care. The Department has implemented and will continue to implement a statewide operating procedure, "Photographing Children Placed in Emergency Shelters or Foster Care," CFOP 175-83, requiring this action.

14. Runaway/ Abducted Children Plan

The District implemented and will continue to implement a program to facilitate the location of and the safe return of children who are runaways, or are abducted by family or

relatives, from their assigned placements. This program is explained in the July 9, 1999, Status Report.

The Department is implementing a statewide operating procedure, "Prevention of and Services to Children Who Run Away while in Substitute Care," CFOP 175-85, that establishes guidelines for preventing children placed in substitute care from running away and establishes a uniform policy that prompt action is taken to find children who run away and to prevent further incidents. The District's tracking of runaway and abducted children in foster care has been expanded to include all children under Department supervision. In addition, the runaway / abducted child tracking system will continue to involve, for FY 99/00, an outreach team under the Henderson Mental Health contract to facilitate the location, engagement and assistance of foster children who have run away to obtain an appropriate, safe and stable placement. The successful interagency exchange of information between fifteen local law enforcement agencies, the Department of Children & Families, the Department of Juvenile Justice, the Attorney General's Office, the Guardian ad Litem program, the Broward County School Board and Covenant House will continue. In all cases of runaway or abducted children there will be an immediate notification of law enforcement, immediate issuance of pick up orders, a search procedure and the possibility of termination of parental rights for parents who abduct children.

15. Limit on Number of Children per Foster Home

Before placement, the mix of children in the prospective home will be analyzed to make sure that it is safe. Before any placement, the capacity and number of children in the home will be reviewed to ensure compliance. This analysis will be documented. District 10 will continue to maintain computerized statistics on the reduction of children currently placed in over-licensed capacity homes. The District will not permit any exception to the capacity rules without final approval by the District Administrator. The District will continue efforts to reduce the number of children in foster homes over-licensed capacity in order to comply with the Florida Administrative Code. Therapeutic foster homes will be limited pursuant to Florida law, and exceptions thereto.

16. Faith Community Involvement

The District will continue to seek greater participation of the faith community in the foster care program. District 10 has initiated several programs that offer promise of success. Child Share, a ministry of a large local congregation, Calvary Chapel, is actively recruiting foster parents from Broward County churches. The District is involved in discussions with Project Teamwork for Kids, which is a faith-connected agency from Dade County, actively developing a program to add 150 supported homes. JAFCO - Jewish Adoptions and Foster Care Options, recruits foster homes and provides support to these homes. Florida Baptist Family Ministries, Inc., is developing supported foster homes.

17. Foster Parent Training and Screening

In FY 99/00, with the active support and involvement of community based organizations, District 10 will develop a special initiative program to enhance foster home recruitment and retention. Foster care licensing, re-licensing, training and screening of foster parents will meet all statutory and rule requirements, including mandatory training for foster parents. At the time of re-licensure, local police records will be reviewed for information about the home.

Implementation of mandatory foster parent training and screening will be reviewed for refinement and improvement. The bilateral service agreements will require foster parents to comply with yearly in-service training. The District will meet with and give technical assistance to the contract agencies who are recruiting, training and screening families for their therapeutic and supported foster homes to ensure that their standards are consistent county-wide. All foster parents will receive 21 hours, as the law requires, of training before becoming licensed. All foster parents will receive at least 8 hours of in-service training per year. The District will seek the assistance of experienced foster parents, older foster youth and natural family members to participate in training foster parents. Foster parent training will be required in Department contracts with private agencies.

18. Specialized Training

District 10 will offer specialized training to foster parents and staff on identification and management of aggression, runaway behavior and sexual aggression. The efforts started with the contracted services of Boys Town of Nebraska (a nationally recognized social service training program) to train District 10 trainers to then offer classes to foster parents and staff. The program will be expanded with additional specialized training sessions. The program will provide foster parents general and specialized training relating to the needs of the children they serve. At least 8 hours of this in-service training will be provided to each foster parent. This in service training will be required in Department contracts with private agencies. The requirements of this paragraph shall apply to all foster parents whether supervised by the State or a private agency.

19. Training and Screening of Foster Parents Who Work With Agencies

The District will require that providers of out-of-home care services ensure that foster parents or staff whom they employ, or with whom they contract, meet the same licensing standards as persons who apply directly to the Department to become foster parents. The District will continue to facilitate a monthly provider meeting to address issues and concerns. The District will also continue to develop an interagency agreement among the providers recruiting and training foster parents to promote continuity, consistent standards and interagency cooperation. The Department will continue to advocate and make efforts to facilitate an interagency record sharing mechanism to share the public records of applicants who were foster parents, or who were screened out from fostering, to assist all parties in recruiting only appropriate and safe foster parents. The Department will require interagency record sharing as part of its contracts. The Department will also continue to meet individually with, and to give

technical assistance to, the contract agencies who are recruiting, training and screening families for their therapeutic and supported foster homes program. All requirements in this Settlement Agreement will apply, by contract, to all foster parents whether they are under the supervision of the Department or a private agency or other entity.

20. Complete and Implement Foster Home Corrective Action

District 10 will document the steps it has taken to address the concerns identified in the Fall 1998, quality assurance review of the District's foster home. All corrective action plans will be completed and validated by 4/1/2000.

21. Resource Records Provided to Care Givers

The District will monitor the compliance of counselors in providing the substitute care providers with a complete child resource record, preferably at the time of placement, but no later than five days after placement. This child resource record will contain at a minimum the requirements identified in the Florida Administrative Code and will provide caretakers with records which include critical information about the child including services to be provided and goals to be obtained, at placement, after the plan is developed, and thereafter. This information should emphasize the talents and abilities of the child that should be developed. To the extent known by the Department or its contractors, the information should include dangerous behavior, medical history, educational history, juvenile justice history, emotional and development status and victimization. The record will be maintained and kept current by the substitute care parent or provider and will be monitored by the Department. The District will require that the child resource record, medical records, and educational records accompany the child whenever a change in placement occurs.

22. Foster Parent Participation in Planning and Treatment

Unless deemed inappropriate by the Court, District 10 will require that counselors engage and involve foster parents and service providers (i.e., agencies, therapists, etc.) as members of the team planning for the care of the child and family in order to obtain their insights and enhance their commitment. The District will inform substitute care providers that they are to be included in judicial review hearings for children in their homes and comply with the existing Florida Administrative Code addressing these issues.

23. Support for Foster Parents; Institutional, Respite Child Care, Crisis Intervention

The District will require that respite care for foster parents is provided to the extent funds are appropriated by the Legislature. Payments for foster parents will continue during the respite periods. The District's contracts for supported and therapeutic foster homes under supervision of contracted providers will address the methods of the providers for giving their foster parents crisis intervention, respite care and alternative supports. On call services will be available to

help foster parents resolve problems and prevent disruptions, to the extent funds are appropriated by the Legislature.

24. A system of specialized care rates and specialized foster parent training for children with special care needs is being developed and implemented. This system will include alternative placements for children who cannot safely be cared for in a family setting. Special needs include medical, behavioral, emotional, developmental, and other disabilities. Behavioral disabilities include running away, delinquency, and physically or sexually aggressive behavior. Foster parents who care for these special needs children will receive special care rates and will complete both the universal and specialized foster parent training before caring for special needs children. Absent a waiver by the District Administrator, no more than two children will be placed together in a special needs foster home except in order to keep a sibling group together. This program will be in place by February 1, 2000 consistent with budget limitations and legislative authority.

25. The District will continue to create a culture of respect and responsiveness to foster parents, relative care givers and families. This shall be measured by an annual survey of care givers and completed by September 1 each year.

will 26. a. All critical incidents in foster homes, relative homes or families under supervision will be recorded within a tracking system. Certain critical incidents will be responded to immediately and others will be followed up within 72 hours. All incidents will be reported on the tracking system.

b. An ombudsperson will be appointed for children in custody. The District will take appropriate steps to notify children in custody of the role and availability of the ombudsperson.

HEALTH

27. Timely Screening, Exams and Follow-up Care

monitors A health care plan will be developed so that initial and ongoing health services are provided to children in foster care. All children placed into shelter will receive an "Early Periodic Screening, Diagnostic, and Treatment" (EPSDT) from a licensed health care professional. They will also be screened for contagious diseases or medical problems requiring immediate attention before initial placement. The EPSDT will be completed as soon as possible upon removal, but completed within the time required by Fla. Admin. Code Ann. R. 65C-12.002(3). Once the child is screened the District will promptly first refer the child to the appropriate Medicaid providers who will meet the covered medical, dental or mental health needs that were identified during the screening period. If an appropriate Medicaid provider is not available the child will be referred to an appropriate alternate provider. Case plans in the District will specifically address the identified significant needs and services for these medical, health, developmental and therapeutic needs. A record will be kept in accordance with Department regulations.

28. Medicaid Cards

All children entering the system will be processed for Medicaid eligibility and Medicaid cards will be issued to the foster parents in accordance with Fla. Admin. Code Ann. R. 65C-12.005 (1999). Foster parents will continue to be provided letters of assurance of payment for providers when Medicaid cards are pending. The District will continue to advise and request, as appropriate, the courts to enforce orders as needed that may include parental obligations to the child for continuation of existing health insurance.

29. Special Medical Unit

The District will continue to maintain a special medical foster care unit for medically fragile children. This program provides an alternative to hospitalization or long-term institutionalization of these children. The counselors in this specialized unit will handle the caseloads of foster children identified with complex medical needs. Unless it conflicts with the best interests of the child, all children with these special medical needs will be cared for by this unit. The District will continue to require tracking of infants and children in foster care with complex medical problems. This unit will be required to have a representative member, as needed, attend the Multiple Handicap Assessment Team (MHAT) meetings which staff medically complex children. The medical foster care program will utilize family based foster-placements with specialized training and the District will continue its efforts of expansion.

30. Mental Health Services and Crisis Intervention

The District will employ the least restrictive and most cost beneficial means necessary to safeguard the physical health, mental health, and welfare of the children in its care. The comprehensive assessments of children removed from their homes and entering the dependency system will be reviewed and case plans and services directed towards the child will reflect appropriate services to be delivered to address those identified emotional and mental health issues. District 10's Alcohol, Drug Abuse, and Mental Health Program ("ADM") will work in collaboration with the Family Safety Program, the community, providers and targeted case managers to meet the needs of children in foster care who have identified mental and emotional health issues. The ADM program will provide intense utilization management services for the children in residential care, to the extent funds for such services are appropriated by the Legislature. The Defendants will provide the plaintiffs with constitutionally-mandated levels of ADM services. There will continue to be mobile crisis intervention as warranted in District 10.

EDUCATION

31. Broward Agreement Implementation

Since November 30, 1998, the Department District 10 and Broward County School District staff have been meeting to develop joint procedures to improve education services and to provide an extra measure of support to students in foster care. The agreement between the Department, District 10 and the Broward School Board became effective January 19, 1999, and is currently being updated and improved for the 1999/2000 school year.

The intent of the agreement is to provide procedures which create an awareness of the foster care students' unique educational needs and to provide supportive educational interventions. The partnership between the school board, the Department counselor, and the foster parents will increase the likelihood of these students becoming academically successful. In order to accomplish this goal the following procedures are being implemented during the 1999/2000 school year:

- a. The establishment of an identifier/code for foster care students as part of the Student Support Tracking System;
- b. a school guidance counselor and clerical support located at the Department Assessment Center to prepare educational status report for students entering the assessment center;
- c. student intervention plans for students determined to need additional educational support;
- d. → transportation of foster care students if needed on a case-by-case basis to ensure they do not have to change schools when their placement changes if it is in their best interest;
- e. → surrogate parents will be appointed in appropriate circumstances for students participating in the Exceptional Student Education (ESE) program;
- f. re-entry of runaway foster children back into the school system;
- g. → school registration of foster children;
- h. foster care designees in each school who will have primary responsibility for coordinating / monitoring the support and educational interventions for the foster care student and to communicate with the Department counselor and /or the foster parents on a variety of issues, including truancy.

In addition, the foster care procedures for the "Principal's Handbook" will be ready for the 1999/2000 school year. As of August 4, 1999, the School Board has issued a mandate requiring each principal to appoint a designee to carry out the above procedures. The designee is required to attend a foster care designee training session prior to the commencement of the 1999/2000 school year.

32. The District will report educational progress to the Dependency Court in each judicial review report. ✓

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33. The District's protocol with the Broward schools will enable children to remain in their own schools when they go into placement and will involve the teacher, foster parent, social worker and community resources in a partnership to enable the child to achieve his/her educational potential. The protocol requires schools to promptly notify the District of any problems of non-attendance or failure to complete educational requirements and a team meeting of the above participants will develop a plan to resolve the problem. As part of their contract, foster parents will be required to notify the Department of any truancy and the District will take action as appropriate.

34. A policy for recognition will be developed and implemented to recognize the educational achievements of children and the support of foster parents, teachers, and social workers.

PERMANENCY

35. Identify and Eliminate Barriers

The District will develop an analysis on what keeps foster parents, relatives and others from adopting. This analysis will be used to develop and implement strategies to eliminate barriers. When unification or adoption is not feasible, the District will develop procedures to prepare children for alternative goals or placements in accordance with Chapter 39 and federal law. These alternatives may include, but are not limited to, long-term foster care, independent living, custody with a relative on a permanent basis with or without legal guardianship, or custody with a foster parent or care giver on a permanent basis with or without legal guardianship.

36. Training on Adoption Subsidy and Legal Rights of Adopting Parents

The District will ensure that foster parents, relatives and prospective adoptive parents understand the availability of the adoption assistance program and the legal benefits of adoption. The Department will pursue termination of parental rights when appropriate in cases involving relative placements, and will encourage relatives to adopt or assume permanent guardianship.

37. Post Adoptive Services

The District will continue to maintain adequate adoption counselors to address post-adoptive time-limited services for adoptive families. Closed adoption cases brought to the attention of District officials due to problems will be referred to the Department's specialized adoption units for referral services and interventions to assist with stabilizing the adoptive home.

INDEPENDENT LIVING

38. Emancipation Plan

a. The District will require that all children in foster care, sixteen years of age or older, are offered independent living services as appropriate. These services are intended to assist these young adults in making a successful transition from dependence to independence. It will focus on the long-term needs of all youth in the program regardless of their living arrangement.

b. The District will approve placement of any foster child sixteen years of age or older in an independent living arrangement upon establishing that this alternate care arrangement is the most appropriate plan for the health, safety and well-being of the child. While in independent living, the children will continue to be subject to court review provisions.

The District will identify and keep statistics on children sixteen years old or older in foster care who do not have a specified goal of independent living. The District will then staff these identified cases with a goal of independent living where appropriate.

39. Housing, Jobs, Medical Care, Emancipation Training

District 10 program staff will promote the integration and coordination of services necessary to support an independent living network, including housing, jobs, medical care and emancipation training. The network will be expanded to include foster parents, community parties and volunteers to assist the youth in meeting the identified needed basic skills for their success. The training and special initiatives of the District will address provision of necessary life coping skills to be successful in independent living. This will include domestic skills, social skills, education, job training, utilization of support networks, health and safety training and financial management and outreach programs. These services will be documented in the youth's case plan which will be signed by the youth, the caretaker and social worker. The Department will abide by its operating procedure.

40. Mental Health Services

The District will continue to facilitate the acceptance of adolescents who have emotional and mental health issues and needs into the independent living programs. The District will monitor the program's effectiveness and ability to accommodate and provide specialized program components to these children to help them become successfully independent. Mental health services will be provided to eligible children to the extent medically necessary.

41. Life Book and Other Records

All children in custody of the Department in excess of 6 months will have a Life Book modeled upon one of the national models.

42. Representatives of the organization of foster youth will meet monthly, with the District Administrator or her designee, and annually, at the statewide meeting, with the Secretary or her designee, to plan ways to improve the program and quality of service to children and families.

43. As required by Chapter 39, the Department will advise children in custody of Chapter 39.4085, the legislative findings and declaration of intent for goals for dependent children.

CHILD WELFARE WORKFORCE

44. Size of District 10 Workforce

The District will continue to utilize the OPS training pool as a method of anticipating vacancies and ensuring the prompt selection of persons to fill vacancies. Also, the Secretary has acted to reallocate the base operating budget and new funds appropriated to better achieve staff equity among the 15 Districts. Pursuant to this reallocation, District 10 has received more than 100 new positions of counselors, supervisors and support staff for 1999-2000. As set forth in the Status Report filed July 9, 1999, the Children's Legal Services Program operated by the Florida Attorney General's Office was allocated additional legal positions. In Broward, three of the four additional attorneys have been hired. When the fourth attorney is hired, the total number of attorneys will have increased by more than thirty percent. The District expects that the stability of the workforce will be enhanced further by the new training programs that have been implemented. The District also is piloting a new statewide initiative on pre-employment screening where applicants will be given a job interest test that will help identify inappropriate applicants prior to employment and training. The District has initiated new mentor programs and will continue to give salary incentives to those staff completing the mentor program requirements. These mentors support new training that places counselors in the field sooner to test skills and motivation. Additionally, the District will comply with new statewide certification procedures that will be required of child protection employees. It is recognized that workforce changes will occur with the transfer of protective investigations to the Broward County Sheriff's Office (as described below), and with the move to community based care, but the Department will utilize its good faith efforts to maintain stability to ensure that each child has continuity in his/her case management and his/her treatment team in his/her spell of care.

45. Pre-Service and In-Service training of Staff and Supervisors

The Professional Development Center is training at locations in Broward County eliminating the need for Department recruits to travel to Dade County for training. The District has implemented a centralized system of maintaining records of all employee training. The District will continue to offer and expand in-service training for counselors, supervisors, providers and foster parents. All District staff will be retrained to assess risk to children in light of the mandate of the Adoption and Safe Families Act of 1997 ("ASFA") PL 105-89, November 19, 1997, 111 Stat 2115 (1997). The training to be provided to staff and to supervisors is summarized in the July 9, 1999, Status Report.

46. Accessibility of Policy and Procedure

The Department will continue to update all policies and procedures and continue to post them for all interested parties on the Internet at their web site: www.dcf.state.fl.us.

47. Improved Court Procedures

The District will continue to meet monthly with the Office of the Attorney General Children's Legal Services ("CLS") staff and will seek to improve interagency coordination of systems to ensure the procedures in place are the most appropriate for the system to work effectively. A protocol has been established in which CLS will appeal, take a writ, or otherwise contest adverse judicial decisions in which a child's safety or permanence is negatively affected after consultation with District legal counsel and approval by the Department. The number of writs and other contests initiated each month will be reported by the District.

48. Equipment

The District will require that the basic equipment reasonably necessary for staff to complete the job is provided. This will include all appropriate staff being provided a beeper, phone with voice mail, and access to computers. The Department will continue to use its good faith efforts to pursue funding to provide appropriate staff with cellular telephones.

49. Prompt and Timely Investigations

All valid abuse and neglect reports will be responded to in a prompt and timely manner. Pursuant to a contract with the Department, the Broward County Sheriff's Office (BSO) will assume responsibility for protective investigations. BSO's responsibility will be phased in over the course of this fiscal year. The Department and the BSO will use their good faith efforts to eliminate backlog of investigations by the end of the current fiscal year and otherwise to comply with the required time frames for investigations as set forth in Chapter 39.

50. Appropriate Staff Client Ratios / Anticipatory Hiring and Training

The Department will utilize good faith efforts to lower the ratio of "front line" family safety counselors and supervisor caseloads to the standards of the Child Welfare League of America.

51. Involve Staff in Developing Plans for Quality Improvement

The Quality Improvement program to be implemented by the Department envisions the participation and input of all Department staff, as well as of the Department's customers and stakeholders. At the center of quality improvement activities are teams of employees empowered to identify and make needed improvements. The integrated model for quality improvement calls

for teams at all levels within the Department beginning at the field unit and ending with a statewide team. Team leaders at one level are team participants at the next team level. All staff, from the Secretary to district case workers and support staff, will be included in the process. The results of this process will be included in a quarterly report.

52. Each supervisor will receive instruction in professional supervision.

53. Children's Legal Services (CLS) will review all petitions and court reports for legal sufficiency before presenting them to the court.

MANAGEMENT SUPPORT

54. Incident Tracking System

Computerized tracking of incidences involving children under the District's supervision - ranging from a missed court hearing to a hospital visit -- will be available to managers to facilitate a prompt and appropriate response. A daily computerized tracking system was developed by the Department for District 10 that will incorporate the existing computer system called Integrated Child Welfare Services Information System (ICWSIS). The system, when fully implemented, will allow foster parents, the Guardian ad litem program and providers to report into the system their concerns, problems and significant issues regarding all dependent children under the supervision of the Department.

55. Reports for Tracking Performance

A situation report is published monthly which tracks performance and output measures for all of the Department's programs. Charts and tables on outcomes, outputs and operational drivers will present a data intensive review of the Department's Statewide and District performance. Where applicable, performance of community-based care providers will be separately identified.

The data will be available on line and used on an ongoing basis by Department management-- including District Administrators, Assistant Secretaries, the Secretary and Deputies-- as a tool to assess the effectiveness of operations and to identify "hot spots" within the agency. At least monthly, and whenever responding to further unusual incidents or reports of abuse or neglect or inadequate quality of life conditions in the home, the incident tracking system will be reviewed to identify patterns of incidents to children in homes.

The data will be used on an ongoing basis by Department management as a toll to assess the effectiveness of operations and to identify "hot spots" within the agency. Providers with performance more than one standard deviation from federal and state benchmarks for a particular measure will be required to develop and implement corrective action plans.

56. Monitoring of Private Providers

As the District implements community based care, Department contracts will require that private providers act in accordance with the terms of this plan. The Department will enforce compliance with the contracts.

III. QUALITY ASSURANCE AND QUALITY IMPROVEMENT

A primary objective of the Department is the establishment of an integrated system of quality improvement, paired with strong quality assurance activities. The primary objective of the quality assurance and quality improvement system and the exchange of information described in Part IV below is to ensure the safety of children in custody of the Department. This integrative piece is the responsibility of the Mission Support and Planning Team (MSPT), headquartered at the central office. The MSPT is developing measures for evaluating the success of the plan described in Part II with input from the plaintiff class to determine if children in custody of the Department are safe. Many measures, however, are still being defined and methodology for collection is being developed. Such measures will be used to evaluate the effectiveness of the foregoing plan. Prior to final adoption, the measures will be shared with class counsel for input and discussion. If the parties cannot agree to the measures to be utilized, and the Department refuses to adopt measures that impact the safety of children, the parties agree to return to mediation for resolution. If mediation is unsuccessful, the federal court will resolve the dispute.

The Department will agree to use an internally developed quality improvement and quality assurance plan ("QI/QA") to monitor the system of care. All drivers, including the specific requirements of this agreement, will be monitored as agreed upon by the parties. Progress in fulfilling the requirements that are not subject to monthly monitoring will be analyzed and reported on in a quarterly report. Both the monthly reports and the quarterly reports will be sent to plaintiffs within 30 days of the end of the month or the quarter. Additionally, the District will provide plaintiffs with monthly updates of its Matrix.

To ensure that children served in out of home care by the Department of Children and Families are safe, the following quality improvement/assurance activities are being put in place:

- 1) The district has initiated a quarterly quality improvement process. This process is an internal staff-driven look at district and state performance information. Meeting minutes will be maintained. The minutes will address progress made and areas of ongoing difficulty. The product of any such meeting will be an action plan with monitoring strategies to support continuous district improvement. The minutes are public records and will be posted. Plaintiffs will offer suggestions to the district when ongoing issues exist.
- 2) The data that will be used for both quality improvement and assurance activities has been defined in a performance model that includes measures from the following sources:

- a) agency Monthly Situational Report and performance based budget data (PB2)
 - b) federal review data (Adoption and Safe Families Act Audit and Title IV-E Audit)
 - c) monthly district status report
 - d) quality delivery system
 - e) record review data
- 3) Validation of district data is ongoing and will continue to occur through quality assurance case reviews, led by the Mission Support and Planning Team and the Family Safety Quality Assurance Team. These reviews will occur three times in the year 2000 (January for setting baselines, June and November). The reviews will be conducted on a statistically appropriate sample, randomly pulled from the District. Plaintiffs will have input into the data collection methods and tool.

All persons involved with the preparation and monitoring of the Q/A, as well as those involved with the monitoring of this Agreement, will be advised that falsification of government records is a crime and that any falsification of records will lead to discipline and possible criminal prosecution. To ensure that there is no falsification, a statistical sampling of the records reviewed will have verification tests done such as interviewing persons cited in the record.

IV. WORKING RELATIONSHIP WITH THE PLAINTIFF CLASS

Broward County children who are in Department custody because of abuse, neglect or abandonment are the intended beneficiaries of the foregoing plan, and the State officials charged with implementing the plan desire input from this class of children regarding the effectiveness of the steps being taken to address their needs. The State defendants agree to work cooperatively with the class counsel and to evaluate any suggestion for corrective action which the plaintiffs believe may better address the needs of the foster care system and which plaintiffs believe is necessary to meet the requirements of this Settlement Agreement and to insure the health and safety of children in care. To further this end, during the term of this Settlement Agreement the District Administrator for District 10, or his/her designee, will meet at least once each month with counsel for the plaintiff class, or other appropriate representative of the plaintiff class, to discuss plan implementation.

At these meetings, the District 10 Administrator, will seek input regarding the effectiveness of the steps being taken to implement the plan. It is envisioned that free, open and frank discussions of problems, limitations and successes will further the achievement of the plan's goals. Any component of the plan is suitable for discussion, and the District Administrator will also welcome new ideas for improvement. The class representatives may present their views, or the views of any individual class member, for improving the foster care system. The District 10 Administrator may also present issues to the plaintiff class and request the class representatives to give consideration to the issue and report the views of the class to the District Administrator.

It is understood by the parties that the establishment of routine procedures for monthly meetings with the District Administrator will not preclude plaintiffs from requesting the opportunity to confer with the Deputy Secretary on items not in the control of the District.

The District Administrator also shall designate a Department official to serve as a liaison to the plaintiff class for routine contacts. The liaison will be available to discuss issues on a regular basis with representatives of the plaintiff class. It is envisioned that such an open-door of communications will help avert problems, and allow consideration of matters that may need prompt attention.

The District Administrator shall give consideration to all suggestions presented by the plaintiff class, or individual members of the class, but the District Administrator is not obligated to adopt the suggestions.

To help prepare for the plan implementation meetings, the State defendants will provide to class counsel copies of the reports and statistics generated by the quality assurance and quality improvement program described in Part III of this Agreement.

Additionally, the State defendants will allow reasonable requests for inspection of records from the class counsel that do not unduly burden staff responsible for implementing the plan.

It is recognized that some of the records which may be requested by class counsel contain confidential information that, by Florida law, otherwise is exempt from disclosure. The defined objective of class counsel in reviewing the records of children in foster care is ensuring effective implementation of the plan. The record review, however, may raise an issue as to whether particular class members should obtain relief which extends beyond the relief sought in this litigation. The parties have devised a methodology by which class counsel can pursue the objective of this litigation, while also ensuring that other legal rights of children in foster care are protected properly.

The parties agree that such case files and confidential records will be reviewed by a designated person, selected by agreement of the parties. If the designee determines, upon review of the records, that a particular child might be in need of, or entitled to, additional protection or legal relief, the designee will report the matter to the Dependency Court of the Seventeenth Judicial Circuit. The Dependency Court can consider, consistent with its normal jurisdiction, whether additional protection should be provided to the child or whether counsel should be appointed to represent the best interests of the child. The designee shall not reveal any confidential information except as required to the Dependency Court. The parties agree to cooperate and obtain an appropriate court order for the release of case files and confidential records to the designee.

V. RESOLUTION OF DIFFERENCES

This Agreement envisions a cooperative working relationship between the officials of the Department of Children and Family Services and the class counsel. The Department has agreed to provide a Q/A analysis to plaintiffs every six months for the plaintiffs to measure and evaluate defendants' progress implementing the plan. It is agreed that the last Q/A will be provided to plaintiffs no later than one month before the end of court jurisdiction. It is also recognized, however, that differences may arise in the course of plan implementation regarding the most appropriate methods for achieving the goals of the plan. The terms of this Agreement encourage suggestions from class counsel to the State officials for improvements in the foster care system. At the same time, the class counsel recognize that it is the responsibility of the State officials to operate the foster care system, and that all of the ideas offered by the class counsel will not necessarily be adopted.

The monthly meetings with the District Administrator shall be the primary forum in which the class counsel will offer suggestions for improving the foster care system as operated in District 10. The State official serving as the liaison to the plaintiff class will be available for more frequent discussions, but it is agreed that any issue of importance to the plaintiff class will be presented to the District Administrator at the monthly meeting, unless the matter has been satisfactorily resolved by less formal means. In addition to the regularly scheduled meetings, class counsel may request a prompt meeting with the District Administrator when presented with exigent circumstances that may implicate the safety of children under Department supervision.

The plaintiffs and class counsel agree to accept and respect the authority of the District Administrator to operate the system of foster care, but want to ensure that the system promotes safe placements and protection from harm for members of the plaintiff class. This Settlement Agreement, however, is not designed to preclude continued consideration of suggestions that are offered to improve the foster care system in District 10. To further this interest, in the event that class counsel is not satisfied with a decision of the District Administrator regarding a suggestion offered by the plaintiffs, class counsel may request reconsideration of the decision.

The request for reconsideration shall be in writing, shall fully describe the issue presented and shall explain why the District Administrator's decision is adverse to the proper protection and care of children under the Department's supervision in District 10. Prior to responding to the request for reconsideration, the District Administrator will consult with the Secretary, or her designee, to ensure that any decision to be rendered reflects the policy of the Secretary. The District Administrator shall respond to the request for reconsideration, in writing, within 20 days of the receipt of the request. Class counsel may request a shorter period of time for response, if counsel certifies that a quicker decision is necessary to protect the safety of children under the Department's supervision.

If the parties are unable to resolve the issue after the written response from the District Administrator, the parties agree to return to mediation to resolve the dispute, however, plaintiffs' counsel can forego mediation if plaintiffs' counsel certifies there is a systemic and substantial risk of imminent danger to children in Department custody and that the time for mediation would

exacerbate such risk. Either party may seek fees pursuant to the law and the federal rules of civil procedure.

If mediation is unsuccessful, class counsel may seek further relief from the United States District Court for the Southern District of Florida, if, and only if, the dispute resolution procedures described above have failed to resolve an issue to the satisfaction of class counsel, and class counsel certifies that the failure of the District Administrator to act in the manner requested by class counsel violates the standard of care required by the U.S. Constitution and creates a substantial and systemic risk of real danger to the safety of children in foster care. Any such motion for further relief must include a description of the action requested of the Department, a certification that the dispute resolution procedures described above have been exhausted, and an explanation as to why the requested relief is necessary to protect the constitutionally required safety of children under Department supervision. Lack of funding or failure to implement the plan outlined herein shall not be grounds for the continued jurisdiction of this Court, without a showing that Defendants' care violates the standard of care mandated by the U.S. Constitution.

VI. TERMINATION OF THE LITIGATION

This Settlement Agreement has been entered by the parties out of mutual respect of a commonality of interest in addressing the foster care system in Broward County. Neither the Agreement nor any of its language is to be interpreted as an admission of fact or of legal liability. The statements of fact and law contained in this Agreement are provided only for the purpose of this litigation and may not be utilized in any other proceeding, other than a proceeding authorized by Part V of this Agreement. The parties envision that within 18 months, the Court will terminate jurisdiction and dismiss this action.

The Settlement Agreement will be effective only if it is approved by the Court. Upon execution of the Settlement Agreement the parties will file a joint motion requesting that the Court approve a Notice of Settlement in accordance with Rule 23(e) of the Federal Rules of Civil Procedure. The Notice will be published to class members, a copy will be served in each class member's dependency proceeding, and notice will be provided to the District 10 Guardian Ad Litem program. This Settlement Agreement will be effective as of the date of the Order approving the settlement.

The parties agree the Court will retain jurisdiction over the case for eighteen months following Court approval of the Settlement Agreement unless defendants successfully petition the Court for early termination or the plaintiffs successfully petition the court to extend as outlined herein.

The Court may administratively close the case for court operational purposes after the Settlement Agreement is approved and attorneys fees and costs issues are resolved. The parties agree that the Court shall administratively re-open the case within eighteen months of the date of

Court approval of the Settlement Agreement upon the filing of a motion for further relief as described in Part V of the Agreement. A motion for further relief described in Part V, shall extend the jurisdiction of the Court until such time as the Court's disposition of the motion. The parties agree they will jointly seek expeditious resolution of such a motion.

Eighteen months following Court approval of the Settlement Agreement the litigation will be deemed dismissed with prejudice. No further action of the parties or the Court will be necessary to effectuate such dismissal. This Settlement Agreement and dismissal resolve all class claims that have been raised, or could have been raised, for declaratory and injunctive relief in this lawsuit.

The parties may, by joint agreement, alter any time limits described in the Settlement Agreement. Concurrence of the Court will be necessary to effectuate any agreement to extend the time in which the case may be subject to re-opening.

Plaintiffs may petition the Court to extend the time during which the litigation may be re-opened upon a showing that the Department is not systemically meeting minimum constitutional standards. Defendants may petition the Court for early termination upon a showing that the department is systemically meeting minimum constitutional standards.

All parties and their counsel shall use their good faith efforts to obtain Court approval of this Settlement Agreement. If the Court does not approve the Agreement, then the Agreement shall be null and void, and all parties shall be placed in the same position as if this Agreement were never proposed or agreed to by the parties. If voided, no language of the Agreement may be used in litigation, or for any other purpose.

The parties agree that plaintiffs are entitled to an award of reasonable attorneys' fees and costs through the date of the court's approval of this Agreement, as though plaintiffs were deemed to be a prevailing party pursuant to 42 U.S.C. §1988. The issues of attorneys fees and costs may be resolved by the Court at any time during the eighteen month period or may be resolved separately by alternate dispute resolution techniques which may be agreed to by the parties. A timely filed motion for attorneys fees and costs shall extend the jurisdiction of the Court for the sole purpose of addressing the issue of attorneys fees and costs.

This agreement consisting of 25 pages is the parties' intent to settle this matter.

Dated: January 26, 2000.

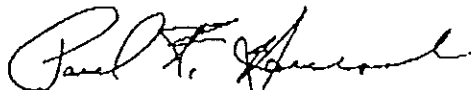
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This agreement consisting of ~~24~~ pages is the parties intent to settle this matter.

Dated January 26, 2000.

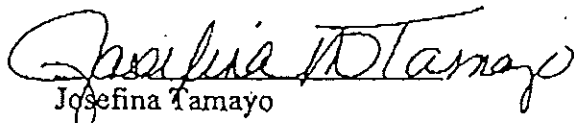
For the Defendants



Richard E. Doran

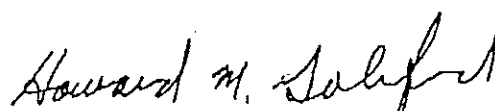


Paul F. Hancock

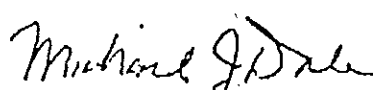


Josefina Tamayo

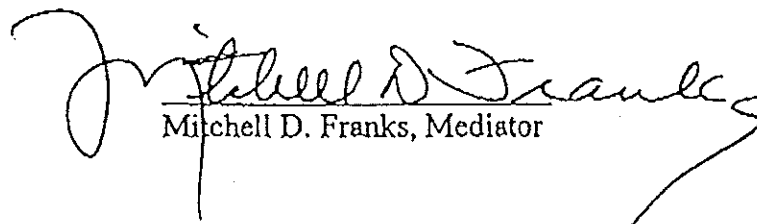
For the Plaintiffs



Howard M. Talenfeld



Michael J. Dale



Mitchell D. Franks, Mediator

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