

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KENNY A., by his next friend,)	
Linda Winn, <i>et al.</i> ,)	
)	
Plaintiffs,)	CIVIL ACTION NO.
v.)	1:02-CV-1686-TWT
)	
NATHAN DEAL, <i>et al.</i> ,)	
)	
Defendants.)	

MODIFIED CONSENT DECREE AND EXIT PLAN

TABLE OF CONTENTS

I. INTRODUCTION 1

II. DEFINITIONS 2

III. PRINCIPLES 4

IV. PLACEMENT 5

V. CASELOADS 9

VI. OUTCOME MEASURES 9

VII. ACCOUNTABILITY AGENT, TECHNICAL ASSISTANCE, AND
MONITORING..... 15

VIII. INFRASTRUCTURE STANDARDS 17

IX. ENFORCEMENT, DISPUTE RESOLUTION, AND TERMINATION 18

X. MISCELLANEOUS PROVISIONS 21

XI. ATTORNEYS’ FEES AND EXPENSES OF LITIGATION 22

I. INTRODUCTION

- A. Except where explicitly stated otherwise, once approved and entered, this Modified Consent Decree and Exit Plan (hereinafter “Exit Plan”) supersedes and replaces the 2010 Modified Consent Decree (defined below). This Court has continuing jurisdiction over this action and the authority to enter and enforce the Exit Plan in accordance with its terms.
- B. This Exit Plan reflects State Defendants’ progress toward meeting their obligations in the 2010 Modified Consent Decree and the parties’ agreement to modify its terms. Accordingly, the parties have negotiated this binding agreement with specific achievements which will allow, upon the Court’s approval, termination of jurisdiction over this action.
- C. For as long as this Exit Plan remains in effect, all provisions referring to any or all of State Defendants (as defined below) shall apply with full force and effect to the State of Georgia and to any subsequent changes to the structure of governmental agencies that have responsibility for the obligations to class member children. This Exit Plan shall be binding on all successors, assignees, employees, agents and all those working for or on behalf of State Defendants. Any state officer or employee (in an official capacity) and any agency responsible for the care, protection, or supervision of class member children shall be bound by this Exit Plan.
- D. State Defendants do not speak for the Georgia General Assembly, which has the power under Georgia law to determine the appropriation for the State’s programs for child welfare. However, State Defendants acting under their existing authority agree that they will comply with the Exit Plan. If Plaintiffs seek a judicial remedy for non-compliance in accordance with Section IX.D of this Exit Plan, and at any stage of subsequent enforcement proceedings State Defendants assert insufficient funds as a legal excuse, then Plaintiffs have the right and may move to rescind their consent to this Exit Plan. State Defendants submit to the enforcement of this Exit Plan to the full extent permitted by law.
- E. If for any reason the Court does not grant final approval and enter this Exit Plan as signed by the authorized signatories, or as altered in accordance

with their consent prior to entry, or if an appellate court reverses approval of the Exit Plan, or if Plaintiffs exercise their right and move to rescind their consent to this Exit Plan pursuant to Section I.D, then this Exit Plan shall become null and void, and the 2010 Modified Consent Decree shall revert back and become fully enforceable in accordance with its terms.

II. DEFINITIONS

For purposes of this Exit Plan, the following terms have the meaning indicated below.

- A. The term “2010 Modified Consent Decree” means the 2005 Consent Decree (entered on Oct. 28, 2005) [dkt no. 488] in this action, as modified by the Stipulated Modification of Consent Decree (entered on Nov. 23, 2010) [dkt. no. 687].
- B. The term “adoptive placement” means the interval during which a child is placed with a prospective adoptive family following the signing of the appropriate adoptive placement agreement form, but before the entry of the adoption decree by the court.
- C. The terms “child” or “children” or “class member children” or “class members” shall mean a child or children who have been, are, or will be alleged or adjudicated deprived who (1) are or will be in the custody of any State Defendant, and (2) have or will have an open case in Fulton DFCS or DeKalb DFCS.
- D. The term “Commissioner” means the Commissioner of the Georgia Department of Human Services.
- E. The terms “day” or “days” mean calendar days (including Saturdays, Sundays, and legal holidays), unless otherwise indicated.
- F. The term “DeKalb DFCS” means the DeKalb County Department of Family and Children Services.

- G. The term “deployed case manager” means any DFCS worker who is temporarily deployed from outside of Fulton DFCS or DeKalb DFCS and who carries a caseload that includes any class member children.
- H. The term “DHS” means the Georgia Department of Human Services.
- I. The term “Fulton DFCS” means the Fulton County Department of Family and Children Services.
- J. The terms “Georgia DFCS” or “DFCS” (when used alone) mean the Division of Family and Children Services of the Georgia Department of Human Services.
- K. The term “guardianship” means the appointment of an individual as a legal guardian for a child as authorized by either the probate court under O.C.G.A. Title 29 or the juvenile court under O.C.G.A. Chapter 15-11.
- L. The term “visit” means a private face-to-face visit with the child in order to monitor and document the following: the child’s adjustment to the placement, the appropriateness of the placement to meet the child’s needs, the receipt of appropriate treatment and services by the child, the child’s safety, and service goals. The term “in-placement visit” means a private face-to-face visit with the child in the home/placement.
- M. The term “specialized case manager” means a case manager who carries a caseload that includes any class member children who have been in care 18 months or longer.
- N. The term “State Defendants” means Nathan Deal (in his official capacity as Governor of Georgia), the Georgia Department of Human Services, Robyn A. Crittenden (in her official capacity as Commissioner of the Georgia Department of Human Services), the Fulton County Department of Family and Children Services, Glenene Lanier (in her official capacity as County Director of Fulton DFCS), the DeKalb County Division of Family and Children Services, and Kimberly Mobley (in her official capacity as Acting County Director of DeKalb DFCS).

III. PRINCIPLES

The parties agree that the following are desired principles that serve as the goals of Georgia's child welfare system and are not separately enforceable standards or provisions under which State Defendants' conduct under the terms of this Exit Plan shall be measured.

- A. Georgia's child welfare system must actively promote and support the opportunity for children to grow up within a safe, nurturing family, either their biological family or, if that is not possible, with kin, or if that is not possible, with an adoptive family, guardianship, or other permanent home.
- B. When children are in foster care, all non-destructive family ties should be maintained and nurtured. If appropriate, children should be placed with relatives who are able to provide a safe, nurturing home for them. Reasonable efforts should be made to place siblings together, and relationships with relatives and siblings should be facilitated and maintained by the child welfare agency, if it is in the child's best interest to do so.
- C. Foster care should be as temporary an arrangement as possible, with its goal being to provide a permanent home for the child as quickly as possible. In making the determination about what plans and services will best meet this goal, the child's interests must be paramount.
- D. The state has primary responsibility for the care and protection of children who enter the foster care system. Insofar as it relies on private contractors to assist in meeting this responsibility, it should only do so according to standards set by and rigorously monitored by the state.
- E. All children in need of child welfare services should receive full and equal access to the best available services, regardless of race, religion, ethnicity, disabilities, sexual orientation, or gender identity.
- F. Children in foster care should be in the least restrictive, most family-like setting possible, and the state should make reasonable efforts to avoid the use of non-family settings for children, particularly young children.

- G. Children in foster care should have stable placements that meet their needs and the services necessary to promote the stability of their placements and to address the trauma of foster care and removal from their family.
- H. DHS, acting through its Commissioner, has the authority and responsibility to deliver foster care services by the means it deems appropriate and consistent with the requirements of law.

IV. PLACEMENT

A. Reimbursement Rates for Foster Care

- 1. Basic foster care maintenance payments:
 - a. With regard to the provision of basic foster family services, including kinship care (limited to kin who are approved foster parents), the following basic foster care maintenance payments are currently in effect: for each child age 0-5, \$15.27 per diem; for each child age 6-12, \$17.26 per diem; and for each child age 13 and older, \$19.65 per diem. DHS/DFCS shall ensure that this rate is paid to all foster parents providing basic foster family services, regardless of whether they are directly supervised by DFCS or by private providers. These rates shall be uniform.
 - b. In no event shall the level of basic foster care maintenance payments fall below the levels in Section IV.A.1.a above.
 - c. Subsequent to July 1, 2017, if Class Counsel forms a good faith opinion that the amounts paid by DHS/DFCS for basic foster care maintenance payments are insufficient to adequately compensate for foster family care, then Class Counsel may seek judicial remedies under the provisions set forth in Section IX.D of this Exit Plan, and shall have the burden to show that the payment structure set forth above fails to adequately compensate for basic foster care for a particular age group or groups.

2. DHS/DFCS shall ensure that all approved foster parents (regardless of whether they are supervised directly by DFCS or by private providers) receive the same reimbursement rate for a given level of service.
3. If DHS/DFCS directly supervises any approved foster homes that provide therapeutic services or operates any specialized group facilities, those approved foster parents or group facilities shall be paid at the same rate. All specialized group facilities shall be paid at the same rate for the same level of service.

B. Appropriate Placements for Class Members

1. Placement Restrictions: The following restrictions represent the parties' shared goals for placements of class member children. If in the extraordinary circumstance a child is placed in contravention of subparts 1.a and 1.b below, State Defendants shall notify the Accountability Agent, who shall provide a report to the parties, as appropriate, including whether the placement shall be an exception to the placement restriction.
 - a. No child shall be placed in a temporary facility or any other foster home or group facility bed used on any temporary basis, for more than 30 days.
 - b. Children shall not be placed in more than one temporary facility within one episode of foster care (meaning the period of time that a child is in foster care from the date of removal from the home until the child is discharged from DFCS custody, except that a runaway does not trigger a new episode of foster care).
 - c. No child shall spend more than 23 hours in a county DFCS office. Any child who spends time in a county DFCS office between the hours of 8:00 p.m. and 8:00 a.m. shall be reported to the MTAT. The intent of this provision is to prevent the use of DFCS offices as an overnight placement for children, as children with urgent placement needs require a safe bed in a home-like environment.

- d. The parties agree that the use of hotels, motels, or similar non-child welfare overnight commercial enterprises is not appropriate for class members' placements. On July 1, 2016, State Defendants submitted, and the Accountability Agent approved, a plan to phase out the use of this practice, such that by December 31, 2016, the State will reduce the number of hotel nights by 50% (fourth quarter of calendar year 2016, as compared to the second quarter of calendar year 2016), and by June 30, 2017, no child will be placed in a hotel, motel, or similar non child welfare placement.

2. Group Care Restrictions

- a. The capacity of a group care setting shall include all beds on the entire grounds of the setting, and includes the total number of beds in multiple cottages.
- b. No child under six years of age shall be placed in a group care setting without the express written approval of the County Director based upon his or her certification that the individual child has exceptional needs which cannot be met in any foster home placement or other facility. The certification shall describe the services which are available in the group care setting to address the child's exceptional needs. No child under six years of age who is certified for a group care setting under the terms in this paragraph shall be placed in any group care setting which has a total capacity in excess of 12 children. This paragraph shall not apply to a child who is under six years of age and who is also the son or daughter of another child placed in a group care setting.
- c. No child between the ages of six and 12 years of age shall be placed in a group care setting without the express written approval of the County Director based upon his or her certification that the individual child has needs which can be met in the particular group care setting and that the particular group setting is the least restrictive placement that can meet such needs. The certification shall describe the services which are available in the group care setting to address the child's needs. No child between the ages of six and 12 years of age who is certified for a group care setting under the

terms in this paragraph shall be placed in any group care setting which has a total capacity in excess of 12 children. This paragraph shall not apply to a child between the ages of six and 12 years who is also the sibling of another child who has been placed in a group care setting prior to the entry of the Exit Plan, except that any such siblings shall be moved to a foster home placement within 12 months of the entry of the Exit Plan unless doing so would not be in the best interest of the children.

3. Race and/or ethnicity and/or religion shall not be the basis for a delay or denial in the placement of a child, either with regard to matching the child with a foster or adoptive family or with regard to placing a child in a group facility. DHS shall not contract with any program or private agency that gives preference in its placement practices by race, ethnicity, or religion, but may utilize its authority to contract with private providers to ensure that the pool of available foster and adoptive families reflects and meets the needs of children for whom foster and adoptive placements are needed, including placements for children for whom placement resources are scarce or unavailable.
4. DFCS will ensure the basic physical needs of food, clothing, and shelter for children in foster care. At the time of placement or at any placement move, DFCS will review the child's clothing needs to assess appropriateness and take necessary steps to ensure that the child has appropriate clothing.
5. In-Placement Visitation (for all placements except adoptive placements): For any initial placement or any change in placement, there shall be at least one in-placement visit during the first week and at least three additional visits within the first four weeks. In all other circumstances, there shall be at least one in-placement visit and one private, face-to-face visit per month.

V. CASELOADS

The following caseloads will exist in Fulton DFCS and DeKalb DFCS and will apply to all case managers, including deployed case managers, who carry caseloads that include any class member children. In the event that a case manager has a mixed caseload, the caseload shall be weighted to reflect the standards in this section.

- A. No CPS case manager shall have more than 12 cases.
- B. No ongoing case manager shall have more than 17 cases.
- C. No placement case manager shall have more than 15 cases.
- D. No adoption case manager shall have more than 16 cases.
- E. No specialized case manager shall have more than 12 cases.
- F. No supervisor shall supervise more than five case managers at any one time in Fulton DFCS and DeKalb DFCS.

VI. OUTCOME MEASURES

- A. **Ongoing Outcome Measures:** The parties agree that the following will be reported as Ongoing Outcome Measures until State Defendants satisfy the requirements set forth in Section IX.E.1 regarding re-designation of an outcome measure or in Section IX.E.4 regarding termination of jurisdiction of this action:
 - 1. Commencement of CPS Investigations Concerning Foster Children: At least 95% of all investigations of reports of abuse or neglect of foster children shall be commenced, including timely face-to-face private contact with the alleged victim, in accordance with Chapter 6 of DFCS' Child Welfare Policy Manual, within 24 hours of receipt of the report.
 - 2. Completion of CPS Investigations Concerning Foster Children: At least 95% of all investigations of reported abuse or neglect of foster children shall be completed, in accordance with Chapter 6 of DFCS' Child Welfare Policy Manual, within 30 days of receipt of the report.

3. **Re-entry Into Care:** Of all children who enter foster care in a 12-month period who were discharged within 12 months from foster care to reunification (including aftercare), living with a relative, or guardianship no more than 8.3% shall have re-entered care within 12 months from the date of discharge. Children who were in foster care for less than eight days are not counted in this measure.
4. **Maltreatment in Care:** Of all children in foster care during the reporting period, the rate of victimization shall be no more than 8.50 victims per 100,000 days.

$$\text{Rate of victimization} = \frac{\text{Numerator: the total number of substantiated reports of maltreatment in the reporting period}}{\text{Denominator: of all children in foster care during the reporting period, the total number of foster care days as of the end of the reporting period}} \times 100,000$$

5. **Search for Relatives:** At least 95% of all foster children entering care shall have had a diligent search for parents and relatives undertaken and documented within 60 days of entering foster care.
6. **Timely Discharge to Permanency (12-23 Months):** At least 43.6% of all children in foster care on the first day of a 12-month period who had been in foster care (in that episode) between 12 and 23 months shall be discharged from foster care to permanency within 12 months of the first day of the period. Permanency, for the purposes of this measure includes discharges from foster care to reunification with the child's parents or primary caregiver, living with a relative, guardianship, or adoption.
7. **Timely Discharge to Permanency (24+ Months):** At least 30.3% of all children in foster care on the first day of a 12-month period who had been in foster care (in that episode) for 24 months or more shall be discharged to permanency within 12 months of the first day of the period. Permanency, for the purposes of this measure includes discharges from foster care to reunification with the child's parents or primary caregiver, living with a relative, guardianship, or adoption.
8. **Adoption/Guardianship Finalization:** For all children whose parental rights are terminated or released during the reporting period (and any

appeals completed), at least 80% will have their adoptions or guardianships finalized within 12 months of final termination or release of parental rights.

9. Permanency Efforts (15/22): At least 95% of all foster children who reached the point of being in custody for 15 of the prior 22 months shall have had either (a) a petition for the termination of parental rights filed as to both parents or legal caregivers as applicable, or (b) documented compelling reasons in the child's case record why termination of parental rights should not be filed.
10. Sibling Placement: At least 80% of all children who entered foster care during the reporting period along with one or more siblings shall be placed with all of their siblings, subject to the following exceptions: (a) doing so is harmful to one or more of the siblings, (b) one or more of the siblings has exceptional needs that can only be met in a specialized program or facility, (c) the size of the sibling group makes such placement impractical notwithstanding diligent efforts to place the group together; or (d) the siblings are placed with relatives.
11. Multiple Placement Moves: The rate of placement moves in foster care shall be no more than 3.67 moves per 1,000 days in foster care.

$$\text{Rate of placement moves} = \frac{\text{Numerator: the total number of placement moves for children in foster care during the 12 months prior to the end of the reporting period}}{\text{Denominator: of children in foster care during the 12 months prior to the end of the reporting period, the total number of foster care days as of the end of the 12-month period}} \times 1,000$$

Children who were in foster care for less than eight days are not counted in this measure.

12. Caseworker Continuity: At least 90% of all children in custody at a point in time during the reporting period shall have had 2 or fewer DFCS placement case managers during the prior 12 months in custody. This measure shall not apply to cases that are transferred to an adoption case manager; case managers who have died, been terminated, promoted, or

transferred to another county; or case managers who have covered a case during another case manager's sick or maternity leave.

13. Visitation (Worker-Child): At least 96.25% of the total minimum number of one in-placement visit per month and one additional private visit per month between case managers and children during the reporting period shall have taken place. Visits in excess of this required minimum of one in-placement and one private visit per month shall be excluded when calculating this percentage.
14. Visitation (Parent-Child): At least 85% of the children with a goal of reunification shall have had appropriate visitation with their parents to progress toward reunification.
15. Visitation (Worker-Caregiver): DFCS placement case managers shall visit each child's foster parent, group care setting, or other caregiver setting at least one time each month. At least 95% of the total minimum number of required monthly visits by placement case managers to caregivers during the reporting period shall have taken place. Visits to any caregiver with respect to the same child in excess of the required one visit per month shall be excluded when calculating this percentage.
16. Visitation (Between Siblings): Children who have one or more siblings in custody with whom they are not placed shall be provided a visit with their siblings at least one time each month, unless the visit is harmful to one or more of the siblings, the sibling is placed out of state in compliance with ICPC, or the distance between the children's placements is more than 50 miles and the child is placed with a relative. At least 90% of the total minimum number of required monthly sibling group visits shall have taken place during the reporting period. Visits among siblings in excess of the required one visit per month shall be excluded when calculating this percentage.
17. Education: At least 56% of children discharged from foster care at age 18 or older shall have graduated from high school or earned a GED.
18. Placements Not in Full Approval Status: At least 98% of all foster placements serving class member children shall be in full approval

and/or licensure status. In computing this percentage, each placement shall be weighted by the approved and/or licensed capacity of that placement.

19. Six-Month Case Plan Review: At least 95% of foster children in custody for six months or more shall have either had their six-month case plan review completed by the Juvenile Court within six months of their prior case plan review, or DFCS shall have submitted the child's six-month case plan to the Juvenile Court and filed a motion requesting a six-month case plan review within 45 days of the expiration of the six-month period following the last review.
20. Permanency Hearing: At least 95% of foster children in custody for twelve or more months shall have either had a permanency hearing held by the Juvenile Court within 12 months of the time the child entered foster care or had his or her last permanency hearing, or DFCS shall have submitted the documents required by the Juvenile Court for and requested a permanency hearing within 45 days of the expiration of the 12-month period following the time the child entered foster care or had his or her last permanency hearing.
21. Health and Educational Needs: Of children in care at a point in time at the end of the reporting period, according to the service needs documented in the child's most recent case plan:
 - a. At least 92% shall not have any unaddressed medical needs;
 - b. At least 92% shall not have any unaddressed dental needs;
 - c. At least 92% shall not have any unaddressed mental health needs; and
 - d. At least 92% shall not have any unaddressed education/development needs.

- B. **Attained Outcome Measures:** The parties agree that the numerical requirements for the following outcome measures from the 2010 Modified Consent Decree (as modified herein) have been met or exceeded by State Defendants for the requisite duration, as of Period 20. The Attained Outcome Measures will not be reported in subsequent reporting periods after the entry of this Exit Plan, except as provided in Section IX.E.2.

22. Corporal Punishment: At least 98% of all foster homes will not have an incident of corporal punishment (any physical punishment of a child that inflicts pain) within the previous 12 months.
23. Timely Discharge to Permanency (<12 Months): Of all children who enter foster care in a 12-month period, at least 40.5% shall be discharged to permanency within 12 months of entering foster care. Permanency, for the purposes of this measure, includes reunification with the child's parents or primary caregivers, living with a relative, guardianship, or adoption.
24. Adoption Disruptions: No more than 5% of adoptions finalized during the reporting period shall disrupt within the 12 months subsequent to the reporting period.
25. Placement Within County: At least 90% of all children at a point in time during the reporting period shall be placed in the county from which they were removed or within a 50-mile radius of the home from which they were removed. This measure is subject to the following exceptions: (a) the child's needs are so exceptional that they cannot be met by a family or facility meeting these geographical restrictions, (b) the child is placed through the ICPC consistent with its terms, (c) the child is appropriately placed with relatives, or (d) the child is in an adoptive placement with a prospective adoptive family pursuant to an appropriate placement agreement, but before the entry of the adoption decree by the court.
26. Visitation (Worker-Child): At least 96.25% of the total minimum number of monthly private, in-placement visits between case managers and children during the reporting period shall have taken place. Visits in excess of the required one private visit per month shall be excluded when calculating this percentage.
27. Court Orders: At least 95% of foster children in custody at a point in time during the reporting period shall have all applicable language in court orders necessary to assess qualification for federal funding under Title IV-E of the Social Security Act.

28. Capacity Limits: No more than 10% of all foster home placements serving class member children at any time during the reporting period shall exceed the following capacity limits: (a) no placement shall result in more than 3 foster children in a foster home, or a total of 6 children in the home, including the foster family's biological and/or adopted children, without the written approval of the County Director, and (b) no placement will result in more than 3 children under the age of 3 in a foster home. The only exception to these capacity limits shall be the placement of a sibling group in a foster home with no other children in the home.

VII. ACCOUNTABILITY AGENT, TECHNICAL ASSISTANCE, AND MONITORING

- A. Ms. Karen Baynes-Dunning shall serve as the Court's independent Accountability Agent. In the event that Ms. Baynes-Dunning is unable to fulfill her duties under this Exit Plan, the parties will select a replacement with the advice of the Accountability Agent. The parties agree that technical assistance will be provided to the Accountability Agent by the Monitoring and Technical Assistance Team ("MTAT") comprised of Steve Baynes, Elizabeth Black (Center for the Support of Families), and Jennifer Haight (Chapin Hall Center for Children at the University of Chicago).
- B. The Accountability Agent, with the assistance of the MTAT, shall conduct the factual investigation and verification of State Defendants' data and documentation necessary to issue public reports on State Defendants' performance under this Exit Plan directly to the Court and to the parties. These reports shall be issued, at a minimum, every six months and approximately 90 days after the close of the each reporting period.
- C. The Accountability Agent and the MTAT will provide guidance and technical assistance to State Defendants toward the goal of capacity building to meet and sustain their obligations under this Exit Plan.
- D. The Accountability Agent, with the assistance of MTAT, will conduct an in-depth case record review of the 5 children who entered DFCS custody before entry of the Consent Decree and who remained in DFCS custody at the end of Period 20 (which replaces Outcome Measures 9 and 10 under

the 2005 Consent Decree). The Accountability Agent, with the assistance of MTAT, will evaluate permanency resources, treatment, and service resources for each child and make recommendations to DFCS on how to best serve this long-staying cohort of youth.

- E. DHS shall provide the Accountability Agent and the MTAT with the necessary resources to perform their duties, including payment of their approved fees and expenses in accordance with state regulations. The Accountability Agent will prepare an initial budget proposal to the parties and the Court within 30 days of the signing of this Exit Plan. This budget will be updated and revised annually on or about the anniversary date of entry of the Exit Plan.
- F. DHS, through its employees or agents, will collect data with regard to each element of performance under this Exit Plan and provide that data to the Accountability Agent and the MTAT on a timely basis. DHS shall cooperate with the Accountability Agent and the MTAT in providing access to personnel, documents, and other information necessary to perform their duties, as determined by the Accountability Agent and the MTAT, including without limitation interviews with agency staff, contract agency personnel, and DHS clients. The Accountability Agent, with the assistance of the MTAT, shall conduct case record and other reviews as she deems necessary, including recommending or requiring DHS to conduct regular case reviews according to a systematic process.
- G. Additional Reporting Items: State Defendants shall provide data and information sufficient to enable the Accountability Agent, with the assistance of the MTAT, to verify and report the items below. For purposes of the following items, “children” is meant to include only those children who were not in foster care custody at the time that the substantiated maltreatment took place, and “cases” is meant to include only those cases involving families with children who were not in foster care custody at the time of a referral into Family Support Services.
 - 1. Of the number of children in each county who, during the prior two reporting periods, experienced substantiated maltreatment, the number who were victims of a second substantiated or indicated maltreatment

report during the following 12 months. For the purposes of this item, for the term “percentage,” the denominator would be the number of children who had substantiated maltreatment during the preceding 12 months, and the numerator would be all children who had substantiated maltreatment during the subsequent 12 months.

2. (a) The number of cases in Fulton DFCS and DeKalb DFCS during the reporting period in which there was a referral into Family Support Services, and (b) the number and percentage of the cases in (a) of this item in which there was substantiated maltreatment within 11-365 days after the referral. For purposes of this item, for the term “percentage,” the numerator would be the number of cases in (a) in which there was substantiated maltreatment within 11-365 days after referral to Family Support Services, and the denominator would be all cases referred to Family Support Services during the reporting period. In addition, for purposes of this item, “Family Support Services” means an alternative to the opening of a CPS case and/or the removal of children from their home and placement into state custody by providing additional instruction, services, or support to the child’s legal custodian either by DFCS or other family and child services agencies and programs.

VIII. INFRASTRUCTURE STANDARDS

- A. The Accountability Agent, with the assistance of the MTAT and input from the parties, shall evaluate State Defendants’ current functioning and performance with respect to the process requirements in Sections 4-7, 9-14, and 18 of the 2005 Consent Decree other than those specifically covered in Sections IV and V above. The parties agree that these provisions will be replaced by a set of measurable and enforceable Infrastructure Standards, which will be established through the following process:
 1. Within 9 months of the Court’s entry of this Exit Plan, the Accountability Agent shall recommend Infrastructure Standards that can be used to measure the foundational elements of the child welfare system that lead to successful outcomes for safety, permanency, and well-being of Georgia’s children and families.

2. Following the Accountability Agent's recommendations, the parties, with the assistance of the Accountability Agent and MTAT, shall then engage in a 60-day period of good faith negotiations in an effort to agree upon final Infrastructure Standards.
 3. After the negotiation period, if the parties cannot agree, the Accountability Agent shall issue a binding decision within 30 days setting the final Infrastructure Standards.
- B. The final Infrastructure Standards are enforceable obligations under this Exit Plan, and the Accountability Agent, with the assistance of MTAT, will measure and report on the Infrastructure Standards in each subsequent reporting period.
 - C. For each reporting period after entry of this Exit Plan but before the Infrastructure Standards are final, the Accountability Agent will not report on any of the process requirements in Sections 4-7, 9-14, and 18 of the 2005 Consent Decree. Instead, the Accountability Agent shall include in her report a summary and assessment of DFCS' implementation of its practice model and the resulting impact on the safety, permanency, and well-being of Georgia's children and families.

IX. ENFORCEMENT, DISPUTE RESOLUTION, AND TERMINATION

- A. Except for the Principles set forth in Section III above, all provisions of this Exit Plan are separately and independently enforceable.
- B. All provisions of this Exit Plan shall apply to all class members, regardless of whether they are in custody under the direct supervision of DFCS or of a contract provider.
- C. All provisions of this Exit Plan shall apply to all class members, regardless of whether their case management is conducted by a Fulton case manager, DeKalb case manager, or deployed case manager.

D. Dispute Resolution: With regard to all provisions in this Exit Plan, the following dispute resolution process shall apply:

1. Prior to seeking judicial remedies for a violation of this Exit Plan, Class Counsel shall notify State Defendants in writing if they believe State Defendants are in violation of this Exit Plan and shall state with specificity the alleged non-compliance.
2. The parties, with the assistance of the Accountability Agent, shall engage in a 30-day period of good faith negotiations in an effort to resolve the alleged violation, which period may be extended on consent of the parties. If the matter is not resolved, it may be presented to the Court for resolution.
3. Plaintiffs may bypass these dispute resolution provisions and directly present a matter to the Court for resolution, if Plaintiffs allege that a violation of this Exit Plan has caused or threatens to cause an imminent danger of substantial harm to class members. Plaintiffs may give emergency notice of their allegations to State Defendants.

E. Reporting and Re-Designation of Outcome Measures

1. Ongoing Outcome Measures

- a. In each reporting period after entry of this Exit Plan, the Accountability Agent will measure and report on all Ongoing Outcome Measures in effect during that reporting period, which will be specifically listed in the report.
- b. An Ongoing Outcome Measure is automatically re-designated as an Attained Outcome Measure for the next reporting period, if in the previous three consecutive reporting periods (totaling 18 months), which may include reporting periods prior to the entry of this Exit Plan, State Defendants improved performance in the first period (as compared to the prior period), then met or exceeded the measure for the next two periods.

2. Attained Outcome Measures
 - a. In each reporting period beginning with Period 21, State Defendants will provide a data report on all Attained Outcome Measures to the Accountability Agent, who, with the assistance of MTAT, will verify the data and report on performance.
 - b. If State Defendants do not meet the required threshold for an Attained Outcome Measure, beginning in Period 21, then the Accountability Agent, with the assistance of the MTAT, will gather additional information and assess the reasons for the decline in performance. The Accountability Agent shall issue her findings to the parties within 90 days from the identification of the deterioration in performance, and the outcome measure will be re-designated as an Ongoing Outcome Measure only if both of the following conditions occur: (1) the Accountability Agent finds that the decline in performance is notable, meaning that it was caused by a deterioration in State Defendants' practice and process that is expected to impact the safety, permanency, or well-being of class members in subsequent periods, and (2) State Defendants do not meet the required threshold for that outcome measure in the next reporting period.
3. The parties may periodically file with the Court a document that lists all Attained Outcome Measures and all Ongoing Outcome Measures then in effect, so that the Court and the public can track progress.
4. Once all of the outcome measures are designated as Attained Outcome Measures, and there are no remaining Ongoing Outcome Measures, then State Defendants may request that the Court issue an order terminating jurisdiction over all provisions of this Exit Plan and this action. Plaintiffs shall not contest a timely and appropriate motion to terminate jurisdiction pursuant to this provision, unless there is an outstanding Court Order or Stipulation providing a remedy for a prior allegation of non-compliance with any Infrastructure Standards or any obligations in Section IV or V.
5. This Exit Plan shall remain in full force and effect pursuant to its terms until the Court issues an order terminating jurisdiction over this action.

X. MISCELLANEOUS PROVISIONS

- A. Each party agrees that it will perform its obligations under this Exit Plan in accordance with all applicable laws.
- B. All formal notices under this Exit Plan shall be deemed duly given upon delivery by hand, or three days after posting, if sent by registered mail, return receipt requested, to the party at the address set forth as follows:

As to Plaintiffs:		
Ira Lustbader Christina Wilson Remlin Elissa Glucksman Hyne Children’s Rights, Inc. 88 Pine Street, Suite 800 New York, NY 10005	&	David Brackett Samika N. Boyd Bondurant, Mixson & Elmore, L.L.P. 3900 One Atlantic Center 1201 West Peachtree Street Atlanta, GA 30309
As to State Defendants:		
Samuel S. Olens Dennis R. Dunn Shalen S. Nelson State Law Department 40 Capitol Square, S.W. Atlanta, GA 30334	&	Jaime L. Theriot Troutman Sanders LLP 600 Peachtree Street, N.E. Suite 5200 Atlanta, GA 30308

- C. The 2010 Modified Consent Decree shall remain in effect until the Court enters this Exit Plan. Once the Court enters this Exit Plan, the Exit Plan constitutes the entire agreement between the parties with regard to the subject matters contained therein, and, except as explicitly stated otherwise, hereby supersedes all prior corrective action plans, agreements, representations, statements, negotiations, and other undertakings. The only exception to this provision is the Curative Action Plan for CPS caseloads, dated December 18, 2014.
- D. This Exit Plan may be modified with the consent of all parties or upon appropriate motion filed with the Court.
- E. All parties have participated in drafting this Exit Plan and, consequently, any ambiguity shall not be construed either for or against any party.

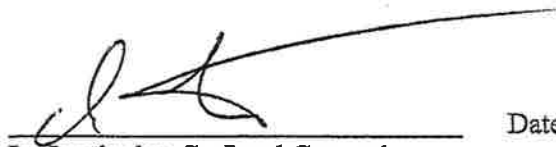
- F. In the interest of permitting the parties to focus upon and achieve the objectives of this Exit Plan, Plaintiffs agree that they shall not commence any new action for systemic declaratory, injunctive, or any other form of equitable relief based on facts, events, actions, or omissions of State Defendants that relate in any way to any claim that was raised or could have been raised in this action or that may occur after entry of this Exit Plan and prior to the entry of an order terminating jurisdiction over this action. This paragraph does not bar claims on behalf of any children in Fulton or DeKalb counties concerning any programs or services for children prior to a child's placement into State custody, including, but not limited to, any diversion, differential response, or other programs or services providing an alternative to the investigation and/or substantiation of a report of abuse or neglect and/or the removal of a child from their home and placement into State custody, and any programs or services for investigations of reported abuse or neglect for children not in State custody. This paragraph does not prevent an action, at any time, by an individual plaintiff for damages or equitable relief tailored solely to the specific circumstances of that individual plaintiff. Further, nothing in this paragraph shall prevent Plaintiffs from bringing any action for systemic declaratory, injunctive, or other form of equitable relief brought after the entry of a termination order pursuant to Section IX.E.4, and based on claims arising after the entry of such order, or from offering into evidence facts arising prior to such order.

XI. ATTORNEYS' FEES AND EXPENSES OF LITIGATION

- A. For purposes of the Exit Plan, the parties acknowledge that class members are entitled to recover expenses of litigation, including reasonable attorneys' fees and nontaxable costs, pursuant to 42 U.S.C. § 1988 and Federal Rule of Civil Procedure 23(h).
- B. The parties shall attempt to resolve the proper amount of fees and expenses of litigation without court intervention, in accordance with the letter agreement protocol dated April 30, 2015, attached as Exhibit 1.
- C. All parties reserve whatever rights each may have to appeal the amount of attorneys' fees and expenses awarded by the Court.

SIGNATURE PAGE
Kenny A., et al., v. Deal, et al., No. 1:02-CV-1686-TWT
MODIFIED CONSENT DECREE AND EXIT PLAN

For Plaintiffs:



Ira Lustbader, Co-Lead Counsel


Date: 11/8/16



David Brackett, Co-Lead Counsel


Date: 11/8/16

For State Defendants:



Nathan Deal
Governor, State of Georgia

Date: 9/26/2016



Robyn Crittenden
Commissioner, Department of Human Services, State of Georgia

Date: 9/26/2016

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KENNY A., by his next friend Linda Winn, et al.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	CIVIL ACTION
	:	1:02-cv-1686-TWT
	:	
NATHAN DEAL, et al.,	:	
	:	
Defendants.	:	

**CONSENT ORDER ENTERING
MODIFIED CONSENT DECREE AND EXIT PLAN**

For good cause shown, and with the consent of all parties, the Court hereby GRANTS the Joint Motion for Entry of Modified Consent Decree and Exit Plan. The Court hereby enters the Modified Consent Decree and Exit Plan, which was attached as Exhibit A to the Joint Motion filed on November 9, 2016, as an order of this Court.

SO ORDERED, this 5th day of December, 2016.

/s/Thomas W. Thrash
United States District Judge