

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LASHAWN A., et al.,

Plaintiffs,

v.

MURIEL BOWSER, et al.,

Defendants.

Civil Action No. 89-1754 (TFH)

SETTLEMENT AGREEMENT

I. Preamble and Rationale

The *LaShawn A. v. Bowser* lawsuit and its subsequent Court-ordered agreements (Modified Final Order (MFO), Implementation Plan (IP), Implementation and Exit Plan (IEP), and Exit and Sustainability Plan (ESP)) have been in effect since 1993, and have supported and governed fundamental changes in the operation and performance of the District of Columbia's child welfare system, now led by the cabinet level Child and Family Services Agency (CFSA).

Over this period, the Defendants' performance has been monitored by a Court-appointed Monitor, The Center for the Study of Social Policy (CSSP), pursuant to Section XX.A.1. of the MFO. As required by the IEP, the Court-appointed Monitor produces performance reports for the Court, the Parties, and the public twice per year.

The most recent agreement governing the *LaShawn* Order, the Exit and Sustainability Plan (ESP), [1206] was developed by the Parties and approved by the Court on October 31, 2019. The ESP recognized the progress the Defendants had made since the MFO, included 24 outcomes to be achieved and outlined additional commitments that the Defendants were to make to facilitate exit from the lawsuit and Federal Court oversight.

The findings in the Monitor's most recent monitoring report, dated June 8, 2020, reflect continued progress towards meeting the remaining *LaShawn* requirements, but also that others have not been met or were only partially met.

In order to acknowledge the Defendants' performance and ensure continued progress towards meeting important unmet goals, the Parties to this lawsuit, Plaintiffs (represented by A Better Childhood (ABC) and the American Civil Liberties Union of the Nation's Capital (ACLU)) and Defendants, the District of Columbia and CFSA specifically, agree to the following actions and commitments to achieve and sustain performance and a process and timetable for exit from Court oversight under *LaShawn A. Bowser*.

II. The Defendants will take the following actions:

- A. CFSA will contract with a provider to develop a specialized psychiatric residential treatment facility (PRTF) for children and youth in foster care. By August 31, 2020, in consultation with the Court-appointed Monitor and Plaintiffs, CFSA will issue a Request for Proposals (RFP) to solicit a provider that will be responsible for both identifying a site within the District or not to exceed 50 miles from the District and developing and operating the residential housing, educational, and treatment program. Proposals to the solicitation will be due by December 31, 2020.

In meeting this obligation, CFSA will select a provider with experience working successfully with children with significant behavioral health needs that require placement and treatment in a specialized residential treatment center. The PRTF will meet nationally recognized standards and have a capacity to serve up to 8 children between the ages of 8 and 12. The contracted provider will have experience designing, staffing, and operating a residential treatment program with educational programming and evidence-based behavioral health treatment services.

- B. By December 31, 2020, CFSA will authorize, recruit for and license enough foster care placements to have a 10% built-in surplus of foster care beds, thereby creating more matching choices and prompt and appropriate placement for all children in care. CFSA will ensure that this surplus is maintained for the duration of this Settlement Agreement.

As part of CFSA's efforts towards meeting this obligation, by June 15, 2020, CFSA will hire a full-time staff person responsible for developing and carrying out a recruitment plan to identify, recruit for, license, and maintain a sufficient number of foster care resources to have and maintain the 10% built-in surplus of foster care placements. The recruitment plan will focus on traditional family-based homes, as well as specialized placement types (e.g., professional foster parents, SOAR, intensive foster care, placements that can accommodate sibling groups, etc.) that are necessary to meet children's needs, reduce placement instability, and end overnight stays at the CFSA office building.

- C. CFSA will ensure accessibility for clinical and therapeutic services, including wrap around, for children and families by:
- i. Maintaining a minimum of four in-house behavioral health therapists, a behavioral health clinical supervisor, and a psychiatric nurse practitioner.
 - ii. Maintaining a contract (or if determined necessary, enter into additional contracts) with a Core Service Agency (or a mental health provider capable of offering the same array and level of services) to provide support and specialized therapeutic and crisis stabilization services to children in foster care aged five and over and their families who need ongoing behavioral

health support through various therapeutic modalities. The contract will provide for the ability to serve 150 children and families each year.

III. Ongoing Defendants' Commitments

A. CFSA will maintain its ESP commitments (Section III) toward self-regulation and public reporting including:

- i. Creating and updating policies; ensuring current policies are available on the online policy manual accessible through CFSA's website and intranet; and training staff on new policies within 45 days of finalization;
- ii. Continuing to strengthen CFSA's continuous quality improvement processes and use the information to self-regulate, evaluate, and adjust practice and policy decisions; and continue to support a public reporting process, with quarterly and annual reports available on CFSA's website;
- iii. Continuing to complete and make public an annual Needs Assessment and Resource Development Plan, and report on Financial Support for Community-Based Services; and,
- iv. Continuing to conduct Quality Service Reviews (QSRs) for at least two years after exit from Court jurisdiction, and at least once every two years thereafter.

B. CFSA will maintain caseload standards as follows:

- i. 90% of workers will have caseloads meeting these standards:
- ii. Social workers conducting investigations of reports of abuse and/or neglect shall not exceed 1:12 investigations.
- iii. Social workers providing services to children and families in which the child or children in the family are living in their home shall not exceed 1:15 families.
- iv. Social workers providing services to children in placement, including children in Emergency Care and children in any other form of CFSA physical custody, shall not exceed 1:15 children for children in foster care.
- v. Staff having responsibility for conducting home studies shall not exceed 30 cases.

IV. Agreements regarding Continued Monitoring, Enforcement, and Potential Exit

A. Remaining Monitoring Period: The Court-appointed Monitor (CSSP) will assess CFSA's performance on the ESP requirements and the Commitments made in Section II of this Settlement Agreement for the period beginning January 1, 2020 and ending December 31, 2020 and provide the Parties with a complete draft containing all relevant information and data by March 1, 2021 and a final report by

March 31, 2021. Plaintiffs maintain all existing enforcement rights throughout this timeframe and Court jurisdiction remains.

- B. Evaluation Period: By April 15, 2021 or within 45 days following the receipt of the draft report, referred to in paragraph A above, Plaintiffs will make additional inquiries, data requests and seek answers to follow up questions. Plaintiffs will use this time to identify any compliance issues reflected in the final report.
- C. If, at the conclusion of the Evaluation Period, Plaintiffs assert that there is material non-compliance on the ESP requirements or the commitments in Section II above, Plaintiffs may raise the concerns to the Defendants.
 - i. Before seeking to enforce any of the specific terms with the Court, the Parties would engage in good faith efforts for a period of up to 45 days to resolve concerns through mediation by the Court Monitor.
 - ii. If the parties are unable to reach agreement through negotiation, Plaintiffs will raise the matter to the Court by filing a motion for enforcement on the LaShawn Docket.
 - iii. Final Settlement and Exit dates, as well as future dates for a fairness hearing anticipated in this agreement are subject to change based on the duration of time spent to resolve matters of material non-compliance raised by Plaintiffs either to Defendants or to the Court.
- D. With the submission of this Settlement Agreement, the Parties will jointly petition the Court for an order preliminarily approving this settlement and setting a fairness hearing on June 1, 2021 regarding this settlement and exit from *LaShawn A. v. Bowser* Court oversight, assuming there have been no assertions of material non-compliance that have been left unresolved through mediation, or raised with the Court, as discussed in Section C, above. As identified in C.iii, the date of the fairness hearing and advance notice to the Parties could be modified subject to time needed to resolve any matters. In the joint petition, the Parties will request that all objections and requests to be heard will be submitted to the Court and counsel for the Parties in writing at least 30 days before the scheduled fairness hearing. At the fairness hearing, *LaShawn A. v. Bowser* will be dismissed upon satisfaction of the following conditions:
 - i. There have been no compliance concerns (with the performance requirements set forth in the ESP and with Section II of this Settlement Agreement) raised to the Court by Plaintiffs.
 - ii. The provisions of this Settlement Agreement will remain legally enforceable as contractual obligations between the District of Columbia and Plaintiffs for the period(s) defined. The agreements included in this

document will become a contract binding upon the Parties and their officials and employees.

- E. The District Court will have jurisdiction over any breach of contract disputes arising out of this Settlement Agreement.¹ Plaintiffs' agreement to jointly petition the Court to approve this Settlement Agreement is contingent upon the judge's agreement to retain jurisdiction over this contract.
- F. Once *LaShawn A. v. Bowser* is dismissed and the terms set forth in this Settlement Agreement become legally enforceable as a contract, CSSP's role as Court-appointed Monitor will be modified to become an Independent Verification Agent (IVA).
- G. Moving forward, CFSA will prepare public performance reports for two six-month periods – the first beginning January 1, 2021 and ending June 30, 2021 and the second beginning July 1, 2021 and ending December 31, 2021. These reports will be validated by the IVA whose assessment will be included as part of CFSA's public performance report. Prior to producing the first of the two required public performance reports, CFSA will collaborate with the IVA on the performance standards and metrics to be included in the public performance report in addition to specific metrics for the reporting on the commitments outlined in Section II (A-C) above, and will consult with plaintiffs' counsel with regard to the standards and metrics to be included in the public performance report.
- H. Subject to the above, Plaintiffs will have the opportunity to file an action alleging breach of the Settlement Agreement beginning on the date Plaintiffs receive the first public performance report and ending 181 days after Plaintiffs receive the second public performance report. Prior to filing an action alleging breach of the Settlement Agreement, and no later than 90 days after receipt of the second public performance report, Plaintiffs will provide the Defendants written notification of the specific factual grounds of the alleged breach. Upon receipt of the written notification from Plaintiffs, the Parties will engage in good faith efforts to resolve concerns through mediation by the IVA, and Defendants will have up to 60 days to cure any such breach or otherwise respond to Plaintiffs allegations. Should good faith efforts and attempts to cure prove unsuccessful, Plaintiffs may file an enforcement action alleging breach of this Settlement Agreement.
- I. Absent the filing of an enforcement action alleging breach of this Settlement Agreement during the applicable period described in paragraph H, this Settlement Agreement and all claims arising from this Settlement Agreement will expire on

¹ To ensure that the District Court will be able to exercise jurisdiction, a provision expressly retaining jurisdiction over this Settlement Agreement will be made part of the judge's order.

the 181st day immediately following the Defendants' final public performance report detailing progress as of December 31, 2021.

- J. This Settlement Agreement is a contract binding upon the Parties and their officials and employees. The Court shall retain jurisdiction over this matter and the Parties for the purpose of enforcing the terms of this Settlement Agreement.
- K. This Settlement Agreement constitutes the entire understanding between the Parties hereto and is intended as the complete and exclusive statement of the agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and negotiations thereto.
- L. The undersigned representatives of the Parties certify that they are fully authorized to enter into and execute the terms and conditions of this Settlement Agreement and to make such Settlement Agreement fully and legally binding upon and enforceable against every Party on whose behalf they have executed this Settlement Agreement. The individuals signing for the Defendants are its officials acting within the scope of their authority. The Parties stipulate, agree, and warrant that they will not challenge or contest in any way the capacity or the authority of any Party hereto to make the agreements, covenants, and stipulations herein.
- M. Upon execution of this Settlement Agreement by the Parties, the Parties will notify the Court of this settlement. As outlined in paragraph D, the Parties will jointly move the Court for an order preliminarily approving the settlement and setting a fairness hearing. Prior to the fairness hearing, the Parties will jointly move to dismiss this case with prejudice and enter the proposed Consent Order (to be drafted) dismissing the case with prejudice and retaining jurisdiction for the purpose of enforcing this Settlement Agreement.
- N. In the event that final approval of this Settlement Agreement is not obtained or the Settlement Agreement is deemed null and void for any reason, the Parties will revert to the positions they occupied prior to the execution of the Settlement Agreement and nothing herein shall be deemed to waive any of the Parties' claims, arguments, objections, and/or defenses.
- O. This Settlement Agreement shall be governed by and construed and enforced in accordance with applicable federal statutes, federal decisional law, and the laws of the District of Columbia.

ACCEPTED FOR PLAINTIFFS BY:

_____ on _____, 2020
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ACCEPTED FOR DEFENDANT BY:

KARL A. RACINE
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 on August 7, 2020
TONI MICHELLE JACKSON
Deputy Attorney General
Public Interest Division