

The placement needs assessment is inadequate in many respects. We highlight out foremost concerns:

1. *Does not address Consent Decree requirements.* The MCD's requirements for the biennial placement (Part Two, Section II.E.1) are crystalline. The assessment does not cite them, let alone meet them.

a. The assessment fails to address the Additional Commitment's primary purpose of *identifying* and *quantifying* unmet placement needs so that Defendants can *plan* to address and cure the shortfall. Because it lacks any quantification of unmet needs and indeed addresses them only in the most general terms (e.g., move children out of congregate care into family settings), the assessment does not permit planning.

b. The Additional Commitment sets forth numerous specific areas that the assessment must address but utterly fails to do so:

[An] assessment of the range of *placements* and *placement supports* required to meet the needs of children in OHP by determining the *placement resource needs* of children in OHP, the *availability* of current placements to meet those needs, and the array of placement resources and services that DHR/BCDSS *needs to develop to meet those needs in the least restrictive most appropriate setting*, including *sufficient family placements for each child* who does not have a clinical need for a non-family placement, family placements available for *emergency placement needs*, placements appropriate to meet the needs of children with *serious mental health problems and children with developmental disabilities*, and *appropriate facilities and programs for semi-independent and supportive independent living*.

The assessment does not address the following mandatory components of the Additional Commitment:

- The specific quantified placement resource needs of children in OHP, both in terms of types of placements and the supports needed to maintain those placements.
- The specific quantified availability of current placements to meet those needs.
- The quantified array of placement resources and services that DHR/BCDSS needs to develop to meet these needs in the least restrictive setting, including the needs spelled out expressly in the Additional Commitment:
 - *family placements* for each child who does not have a clinical need for a non-family placement—the assessment does not specify these at all beyond a generic, generalized comment that children in congregate care generally do not need them
 - *family placements* available for *emergency placement needs*. This is not mentioned anywhere in the assessment, even though the issue of emergency foster homes is major source of contention between the parties, and has been for years.

- placements appropriate to meet the needs of children *with serious mental health problems*. Again, no discussion of this beyond generalized comments that the overstay and waiting lists are signs that children are in institutional or congregate care settings unnecessarily and should be moved to family settings with sufficient supportive services like wraparound.
- placements appropriate to meet the needs of children with *developmental disabilities*.
- appropriate facilities and programs for *semi-independent and supportive independent living*.

The assessment states that, *inter alia*, it was intended to be used by Defendants to meet the requirements of the Additional Commitment, yet it says nothing about the listed items specifically identified in the MCD as examples of what must be addressed. The assessment's failure to address them reflects how far it falls short of what the MCD requires. It does not provide any basis upon which DHS and BCDSS can plan to fill unmet placement needs: how many more of what kind of placement is needed, and what, exactly, is needed in additional support services to ensure placement stability? That is the overarching point of the Additional Commitment, and, like its predecessors, this assessment fails even to attempt to address that question.

2. *Problematic and flawed methodology*. The assessment uses improper methodology to assess BCDSS foster-care placements. It is based entirely on a "paper" review of a sample of randomly selected CJAMS files and CANS assessment forms available digitally, supplemented by a sample of cases on the weekly "overstay" and "waiting" lists reflecting snapshots of children in need of placements as of Friday afternoon of each week. This is not a valid, reliable, or accurate means of determining BCDSS's unmet placement needs.

a. *DSS case records are not adequate*. The adequacy of a child's placement cannot be determined accurately from the digital case file. This was true for CHESSIE and remains true for CJAMS. The most that might be shown is that the agency believes that the placement is appropriate and, depending on the case, that the Juvenile Court parties so stipulated. Until a change of placement is requested, the child will *appear* to be appropriately placed, even though the reality might be very different. For example, CJAMS will not inform a reviewer whether a therapeutic foster home is no longer necessary and that the child can, and should, be stepped down to a regular home or even a relative home. CJAMS will not reveal whether a diagnostic placement in fact is not needed because the child is already well known to the system. It will not reveal whether more efforts should be made to unite separated sibling groups.

- CJAMS is not a sufficiently accurate or reliable source for measuring MCD compliance with numerous objective MCD measures. Defendants are not reporting compliance on numerous requirements due to weaknesses in CJAMS. If CJAMS is not sufficient for those *objective* measures, it is not reliable for this non-objective, highly qualitative question.

b. *No use of qualitative assessment measures.* The appropriateness of a placement is a qualitative determination. Standard assessment practice both in Baltimore and nationally (QSRs, CFRs) is that further investigation and inquiry to stakeholders to get information beyond what is recorded in digital files is necessary to obtain accurate information about the child's status. The researchers' failure to seek information outside of CJAMS and CANS strongly taints the validity of their approach.

- The IVA staff and Plaintiffs' counsel repeatedly urged the researchers to not rely exclusively on the CJAMS case file and warned that stakeholders had to be interviewed to get a full and complete understanding of the child's status. The assessment ignores those requests and does not explain why they believed a CANS/CJAMS-exclusive investigation and analysis would produce accurate and reliable results.

c. *No verification of validity of methodology.* The assessment relies on the core assumptions that (a) the reviewed CJAMS and CANS data are generally accurate and reliable; (b) their information about placements is viable and sufficient to determine whether the placements comport with state "policy," and (c) whether that fact, in turn, is a valid proxy for placement appropriateness. These assumptions are wholly untested and unvalidated.

d. *No accounting for concerns raised by IVA and Plaintiffs' counsel.* For example, the IVA repeatedly warned the researchers that CJAMS is not a reliable source of data or placement info and that further inquiry would be needed. Those concerns were not heeded. Plaintiffs' counsel made clear that the Consent Decree requires the assessment to focus on those children who might need better placements, not just using a snapshot of the overall population. Though the assessment did include some children taken from the overstay and waiting list groups, it did not conduct any meaningful examination of their cases to determine how their crises could have been avoided with better services or care, and what specifically is needed now to create stable and appropriate placements for them. Given that Defendants repeatedly express their frustration at determining and obtaining appropriate placements and services for these "higher end" children, the lack of any meaningful analysis of their cases in the needs assessment is a major failure and disappointment. The lack of responsiveness to the concerns raised by the IVA and by Plaintiffs' counsel is a flaw in design and methodology. If the concerns are rejected, the researchers should acknowledge the issues and should explain their reasons for disagreement.

3. *Insufficient scope of analysis.* The assessment's substantive analysis is insufficient in several respects.

a. *Assessing whether a placement conforms with "policy" does not address the MCD's stated purpose for the needs assessment.* For reasons that have yet to be explained, the researchers elected to assess whether placements met "state policy," however that is defined, not whether the placements are appropriate for the foster children placed there. There is a huge difference between the two. A child might be placed in the least restrictive setting (*e.g.*, a regular foster home), and thus, according to the assessment, comport with state policy but the placement might in fact not be appropriate or stable and might be at risk of disruption. Thus, the assessment measures an outcome that is not a proxy for the requirements of the MCD. It does not explain why this outcome

b. *Insufficient scope of analysis.* The assessment focuses on the placement type: is the child in a least restrictive setting like a foster home. It does not assess needs beyond placement type (i.e., need to move to a new home within the same type); does not assess for risk of instability; does not assess unmet needs like separation of siblings, proximity to home; availability of other relative sources, etc. This narrowed scope of analysis makes the assessment closer to a census, which is not necessary and is more akin to prior failed assessments.

c. *No accounting for step-down within resource types* (i.e., treatment to regular foster home). The assessment does recognize that many children in treatment foster care can be stepped down to regular foster homes, which the IVA has pointed out to Defendants many times over the last few years. But the assessment does not do the hard work of projecting how many children could be stepped down, determining how this process could occur, and assessing how many additional regular foster homes would be needed to do this (if a move of the child were needed as opposed to a reclassification of the current placement and reassignment to BCDSS from the private foster-care agency). Thus, for all practical purposes, it fails to provide any assessment that would facilitate actual planning to accomplish this goal.

d. *No assessment of supportive services to accomplish the recommendations.* Apart from generalized recommendations (e.g., wraparound and other clinical interventions that the Innovations Institute has been supporting), the assessment does not provide any specific analysis of what is needed for specific types of cases, what is available and what is missing or insufficient, how long and in what manner the services should be provided, or anything else that would facilitate actual planning. The Additional Commitment explicitly requires assessment of “the array of ... services that DHR/BCDSS *needs to develop to meet those needs in the least restrictive most appropriate setting.*” This requirement is simply not addressed in the assessment.

4. *Other violations of the MCD.* The assessment serves multiple functions under the MCD. Its most important function, as explained above, is to enable effective placement planning so that foster children have sufficient choice of appropriate placements. This function in turn results in multiple requirements of the MCD beyond the Additional Commitment:

a. *Determination of the continuum of placements.* MCD Placements Outcome 3 requires Defendants to “maintain a continuum of placements reasonably calculated to assure that each child is placed in the least restrictive placement for that child.” The Definition for this Outcome further requires that “[t]he continuum shall include the *types and quantities* of placements *determined by the needs assessment including emergency foster homes.* (Emphasis added). This means that the continuum of placements must be based on a quantitative analysis in the needs assessment. Indeed, the Exit Standard for this Outcome measures whether “[t]he array of current placements matched the recommendation of the biennial needs assessment.” Defendants cannot possibly comply with this requirement where the needs assessment does not assess the “quantities” needed for the various types of placements.

b. *Emergency foster homes.* The Definition for Outcome 3 explicitly states that the placement continuum must meet the quantity of emergency foster homes determined by the assessment. But the assessment does not even address emergency foster homes (which in fact do not exist—another violation). Therefore, the assessment causes Defendants to violate Outcome 3 in a further respect.

c. *Budget.* Additional Commitment 2 requires DHS to include in its budget proposal sufficient funds to secure and maintain the needed array of placement resources and supports, including those needed to support placement stability and to avoid placement in congregate care. But because the assessment does not specify what is needed, it is impossible for Defendants to show that their budget request is sufficient to comply. Thus, the assessment's lack of specificity causes Defendants to violate this Additional Commitment as well.

5. *Unnecessary census of the foster care population.* The MCD already requires Defendants to report on the number of each type of placement available to BCDSS. *See* Outcome 3 Internal Success Measure 1. Defendants consistently report on this measure by providing a census of the number of BCDSS children placed in each type of placement. Thus, we already have a solid census, and it is reported in each of Defendants' compliance reports. Yet the principal analysis of the assessment is creating a census based upon the sample of cases reviewed and then determining how that breakdown comports with policies requiring placement in least restrictive settings, etc. To be blunt: we already *know* that most children are placed in family settings, yet that is the principal conclusion of the assessment. What we don't know is how much more of what types of placement settings are needed, and what types of services, and in what quantities, are needed to support those placements. This assessment, like all of its predecessors, simply fails to answer the question asked. There is significant useful information that was gleaned from the case reviews, so the assessment does have value. But it simply does not provide what is required and needed.

6. *Failure to address the known areas of crisis.* Finally, one of the most disappointing aspects of the assessment is its failure to address meaningfully the crisis that has resulted in consistent ongoing placement of children in illegal settings like hospitals, hotels, and BCDSS offices without medical justification, or those simply sent out of state for placements that turn out not to be good fits. Given the great expertise of the Innovations Institute, we had hoped that they would have directed their attention to these children and explored in-depth the problems in their cases and proposed solutions (both short-term and long-term) to resolve the crises. Instead, the assessment calls for the children to be placed with families and provided with supportive services of the type that the Innovations Institute has been advocating. This is cursory treatment of a major problem that has been bedeviling Defendants for years and causing great injury to the children involved. Plaintiffs' counsel repeatedly urged the researchers to give focused attention on the issue in the assessment, to no avail.

Conclusion. The first biennial placement needs assessment was due on December 31, 2009. Since then, seven more have been required. Defendants have never complied with this requirement. They have never sought input from the IVA or Plaintiffs' counsel in designing a compliant assessment. This last assessment is better than what was done before, but it falls far, far short of what is required and needed. Defendants' substantive non-compliance with the MCD placement provisions is a consequence of this chronic violation of Additional Commitment 1.