

MONITORING REPORT

OF

**THE TECHNICAL ASSISTANCE
COMMITTEE**

IN THE CASE OF

BRIAN A. V. BREDESEN

December 15, 2008

TECHNICAL ASSISTANCE COMMITTEE:

Steven D. Cohen
Senior Associate
Annie E. Casey Foundation
Baltimore, MD

Judy Meltzer
Deputy Director
Center for the Study of Social Policy
Washington, D.C.

Andy Shookhoff
Associate Director
Vanderbilt Child and Family Policy Center
Nashville, TN

Paul Vincent
Director
Child Welfare Policy and Practice Group
Montgomery, AL

TECHNICAL ASSISTANCE COMMITTEE STAFF:

Sharon Carter
Jamie McClanahan
Susan Bunkowske
Kelly Whitfield
Colleen Gleason-Abbott
Michelle Crowley

INTRODUCTION

This report was prepared by the Technical Assistance Committee (TAC) pursuant to the orders entered in *Brian A. v. Bredesen, Civ. Act. No. 3:00-0445 (Fed. Dist. Ct., M.D. Tenn)*, a civil rights class action brought on behalf of children in the custody of the Tennessee Department of Children's Services (DCS). The "*Brian A. class*" includes all children placed in state custody either:

- (a) because they were abused or neglected; or
- (b) because they engaged in non-criminal misbehavior (truancy, running away from home, parental disobedience, violation of a "valid court order," or other "unruly child" offenses).

The *Brian A. Settlement Agreement (Settlement Agreement)*, entered on July 27, 2001, and modified by agreed orders entered on May 8, 2007 and October 1, 2008, requires improvements in the operations of DCS and establishes the outcomes to be achieved by the State of Tennessee on behalf of children in custody and their families.

The Role of the Technical Assistance Committee

The Settlement Agreement established the TAC, which originally consisted of five experts in the child welfare field selected by agreement of the parties, to serve as a resource to the Department in the development and implementation of its reform effort.

The TAC was envisioned as a way of making available to DCS the range of expertise and assistance that was perceived by the parties as necessary to ensure that the reform would be successful. The primary function of the TAC was and continues to be to advise and assist DCS in its efforts to design, implement and evaluate improvements required by the Settlement Agreement. In addition, there are certain areas in which the Settlement Agreement gives the TAC responsibility for making recommendations, which the Department is then required to implement.

Under the terms of the Stipulation of Settlement of Contempt Motion entered by the Federal District Court on December 29, 2003, the TAC also assumed responsibility for assisting the State in developing an implementation plan and monitoring and reporting on the State's performance both under that plan and under the original agreement for a 26-month period beginning January 1, 2004.¹ A Stipulation Extending Monitoring was entered on February 28, 2006, extending the TAC's monitoring role and responsibilities through August 31, 2007.² A further Stipulation Extending Monitoring was entered on May 8, 2007, extending the TAC's monitoring role and

¹ The *Path to Excellence*, the implementation plan developed by DCS in accordance with the Stipulation, was approved by the Court on August 19, 2004.

² In addition, pursuant to that stipulation, the TAC became a four person committee with its current membership.

responsibilities through September 30, 2008. The most recent Stipulation, entered on October 1, 2008, extends the TAC's role through June 30, 2010.

This is the fifth monitoring report issued by the TAC. The previous monitoring reports are available on-line at <http://www.state.tn.us/youth/dcsguide/fedinitiatives.htm>.

The Focus and Structure of this Monitoring Report

This monitoring report is specifically designed to provide information to assist the parties and the Court in determining the extent to which the Department has met or is meeting the specific provisions of the Settlement Agreement. Section One of the report is a presentation and discussion of data related to the specific outcome and performance measures of Section XVI of the Settlement Agreement and includes an update of data presented and discussed in Section One of the September 2007 Monitoring Report. The remainder of the report is structured to correspond to the sections of the Settlement Agreement which contain substantive process, performance, or outcome requirements: Settlement Agreement Sections II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, and XIII.

The references to the Settlement Agreement provisions are indicated in parentheses using the Roman numeral and, where appropriate, the letter and/or number that corresponds to the particular provision referred to. The monitoring report is divided into the following Sections:

Executive Summary

Key Outcome and Performance Measures at a Glance

Section One: Data and Outcome Measures Overview

Section Two: Structure of the Agency (II)

Section Three: Reporting Abuse and Neglect (III)

Section Four: Regional Services (IV)

Section Five: Staff Qualifications, Training, Caseload and Supervision (V)

Section Six: Placement and Supervision of Children (VI)

Section Seven: Planning for Children (VII)

Section Eight: Freeing A Child for Adoption (VIII)

Section Nine: Resource Parent Recruitment, Retention and Approval (IX)

Section Ten: Statewide Information System (X)

Section Eleven: Quality Assurance (XI)

Section Twelve: Supervision of Contract Agencies (XII)

Section Thirteen: Financial Development (XIII)

EXECUTIVE SUMMARY

Significant Accomplishments

The Tennessee Department of Children's Services has undertaken a broad and ambitious reform effort, committed to improving the functioning of all parts of the organization and embracing best practice standards for every aspect of child welfare policy and practice. In the seven years since the entry of the *Brian A. Settlement Agreement*, the Department has much to show for its effort.

The Department has both achieved and maintained demonstrably better results for children and families in a number of areas:

- Only 10% of children entering care are now placed in congregate care settings, half the rate of such placements seven years ago, and the percentage of children initially placed in emergency shelters or other temporary placements has decreased from 9% to 2% over the same period. Eighty-five percent of children who come into care as part of a sibling group are placed together, a substantially higher rate than many systems achieve.
- Over the past two years there have been fewer children in foster care than at any time since the entry of the Settlement Agreement and the Department has accomplished this reduction without an increase in the rate of reentry into foster care.
- After receiving national recognition from the U.S. Department of Health and Human Services in 2006 for its impressive annual increases in the number of children for whom it has successfully found adoptive homes, the Department continues to maintain a high level of success in this area.
- The Department now more routinely seeks a permanent family for every child in its care. The Department has added subsidized permanent guardianship as a permanency option,³ eliminated the use of the “goal” of “long-term foster care,” and limited the use of “other planned permanent living arrangement.” Those children who achieve permanency are achieving it more quickly in recent years than they have in the past. And, while it is too early to be certain, recent data suggest that the number and percentage of children “aging out” of care without a permanent family may be decreasing.

As the TAC has discussed in its previous monitoring reports, the Department has laid the groundwork for further improvements by establishing a wide-ranging set of policies, practice standards, procedures, training curricula and methods, and means of financing and overseeing private providers, all consistent with the principles of the Settlement Agreement and best practices in child welfare.

³ The Department is providing guardianship subsidies under a federal Title IV-E waiver demonstration project approved by the U.S. Department of Health and Human Services.

- Tennessee now has a “practice model”—a set of underlying values and an approach to working with families and children that emphasizes engagement of the family, depends on a thorough assessment of a family’s strengths and needs, and involves families and youth in the case planning and decision making process—and a corresponding set of policies and procedures.
- While these policies and practices are not yet fully and consistently implemented across the state, both the outcomes the Department is trying to achieve and the core strategies for achieving them are broadly understood by both DCS staff and the private providers that the Department contracts with, something that was not the case several years ago.
- The Department’s training curricula have been thoroughly revised to support and promote the knowledge and skills envisioned by the *Practice Model*; and evaluation of both DCS performance and that of private providers is focused on the extent to which the desired outcomes for children and families are being achieved. Tennessee has developed a Training Consortium of 14 colleges and universities across the state to expand the breadth and depth of resources available to support training and professional development. Through the same university collaboration, the Department has greatly expanded its overall training capacity. The Training Consortium now provides the vast majority of pre-service and in-service training for DCS staff and for resource parents.⁴
- The Department has recognized that no reform effort can succeed without a substantial investment in recruitment, training, and retention of competent, caring, and committed staff. It has collaborated with the Consortium colleges and universities to develop a child welfare focused Bachelor of Social Work (BSW) stipend program that is designed to be a “pipeline” for hiring new employees who already have classroom training and relevant field experience in child welfare practice. Over the past year, the Department has implemented a separate hiring register that ensures that it is able to give a hiring preference to stipend program graduates.
- The Department has addressed two critical challenges to maintaining a well qualified workforce: the historically low pay of DCS case managers relative to comparable positions in the public and private sector and the historically high caseloads that precluded case managers from being able to provide the level of attention that children and families need and deserve. Tennessee has dramatically increased its starting salaries for every class of case manager position and it has dramatically decreased foster care case manager caseloads. Caseloads that prior to the entry of the Settlement Agreement routinely exceeded 40 cases are now limited to no more than 20. For the past three years, around 90% of DCS case managers at any given time have had caseloads that are within the caseload limits set by the Settlement Agreement and when those caseloads exceed the limits they tend to do so by only a few cases and for only a short period of time.
- The Department has used Needs Assessment funds provided for by the Settlement Agreement to support resource creation, and the State has committed substantial

⁴ The term “resource parent” is used by the Department to refer to both foster parents and adoptive parents. Similarly, the term “resource home” is used by the Department to refer to both foster homes and adoptive homes.

additional resources to the reform effort in response to well-reasoned budget requests by DCS leadership. In addition, the Department continues to work hard to maintain resources essential for carrying out the Settlement Agreement reforms, even in the face of recent state budget constraints and threatened cutbacks in federal funding.

- The Department has taken some initial steps toward strengthening services to children and families in their own homes, first through incorporating into the Department the work formerly done by independent Community Service Agencies and now through the initial stages of implementation of a Multiple Response System.
- The Department has addressed a number of critical concerns identified in the lawsuit about the lack of clear and effective policies and procedures governing the use of psychotropic drugs for children in DCS custody and about the improper use of restraints and seclusion. The Department has implemented best practice policies and procedures governing use of psychotropics, restraints, and seclusion, and established credible oversight mechanisms for ensuring compliance.
- The Department has addressed the overuse of in-house schools (schools attached to congregate placement settings) for children who could be appropriately served by the public education system, by both strictly limiting the circumstances under which children in foster care can be enrolled in in-house schools and establishing stricter standards and oversight for those agencies operating in-house schools.
- As the Department has moved forward with its outcome-focused reform efforts, it has moved from an organization that had been largely unable to produce basic data about the children in its custody to one that is increasingly data-driven. The Department has done an impressive job in building the capacity of TNKids (its present data system) to provide a wealth of data that it had not originally been designed to produce, while at the same time investing in the development of a successor SACWIS system, the Tennessee Family and Child Tracking System (TFACTS), which will utilize the advances in web-based technology that have occurred since the development of TNKids, and which is designed to support Tennessee's new practice.
- The Department has used its increased data capacity to understand its performance, develop improvement strategies and set goals, and then to track progress toward achieving those goals, both the specific outcome goals and performance measures set forth in the Settlement Agreement and others that the Department has established for its own management purposes. In order to do this, the Department has created a quality improvement structure, both at the state level and within each of its regional offices, led by an Office of Performance Quality Improvement⁵ and supported by regional staff with responsibilities to support and facilitate continuous quality improvement (CQI) efforts in the regions. The Department has adopted a well-designed Quality Service Review (QSR)

⁵ Under the current central administration organizational nomenclature, an "Office" is headed by an Executive Director who reports to one of three Deputy Commissioners. Offices are made up of "Divisions," and the Divisions are made up of "Units." The most current Departmental organizational chart (as of October 1, 2008) is included as Appendix A.

process as an ongoing method for gathering information on the quality of service delivery for children and families and data on both child and family outcomes and system performance.

Key Challenges

In the following Sections of this Monitoring Report, the TAC discusses in detail the extent to which the Department has met each of the specific requirements of the Settlement Agreement. However, there are six areas that are appropriate to highlight at the outset of this report: two that were the focus of the major recommendations of the September 2007 Monitoring Report; two additional items identified in that report as being significant challenges; and two items the TAC has identified in developing this current report as requiring increased attention.

1. Improving the Quality of Case Practice

In its *Road to Reform* implementation plan, the Department identified as its major challenge improving the quality of casework—the critical day-to-day interactions between children, families, case managers, helping professionals, and the community that are needed to make sure that children are safe, healthy, and able to develop and succeed. The Department recognized that notwithstanding its significant accomplishments in infrastructure and policy development, unless these accomplishments were matched by substantial improvements in routine front-line practice, all of this good work will not consistently achieve good outcomes for many of the children in the Department’s care. Despite the impressive progress that the Department has continued to make over the past year, including progress on some key outcomes for children, the Department has not made comparable gains in improving performance in critical areas of case practice. Fewer than 40% of the cases evaluated in the 2007-2008 Quality Service Review scored “acceptable” for any of the core practice performance indicators: engagement of children and families (38%), teaming and coordination (31%), assessment (30%), case planning (28%), plan implementation (31%), and tracking and adjusting (36%).

In attempting to improve the quality of case practice, the Department has some important strengths to build upon: a well-designed Child and Family Team model; a high quality training curriculum to support that model; and a core group of Child and Family Team Meeting facilitators who have skills to facilitate Child and Family Team Meetings (CFTMs) and to coach and mentor others in the Child and Family Team process. However, as the TAC observed in its September 2007 report and as the results of the 2007-2008 Quality Service Reviews reflect, this progress has not yet been matched by equal skills on the part of front-line case managers or, even more critically, by many of the team leaders (supervisors) and team coordinators (senior supervisors) who are responsible for overseeing their work.

The Department has recently developed a capacity to report aggregate data on Child and Family Team Meetings and for the first time has statewide and regional baseline data on the extent to which the required Child and Family Team Meetings are being held, the timeliness of those meetings, team composition and team member presence (including the extent to which the

Department is succeeding in involving the family and members of the family's informal support network and creating teams with the breadth of participation envisioned by the Department's *Practice Model*).

The baseline data reflects considerable room for improvement and the Department is in the process of "drilling down" into the data to develop a better understanding of the barriers to better performance and to develop strategies to address those barriers.

The Department has established the following core practice elements of the Child and Family Team Process as improvement priorities:

- engaging children and families;
- forming strong child and family teams that include not only professionals, but relatives and others who are part of the family's informal support network;
- assisting those teams in assessing the strengths and needs of the family;
- having the team develop and track the implementation of individualized case plans that build on those strengths and address those needs; and
- utilizing the team and the team meeting process for problem-solving and key decision making throughout the life of the case.

The Department recognizes that improvement depends on supervisors themselves having the practice skills relevant to these core practice elements and the coaching and mentoring ability to develop these skills in the case managers they supervise. For this reason, the Department has developed and begun implementing an approach to the training and evaluation of supervisory personnel (the "Good to Great Academy"), the purpose of which is to ensure that supervisors understand and have the ability to coach and mentor case managers on these core practice elements. The regions are each responsible for carrying out the training and evaluation of their supervisory staff. While some regions have done considerable work in this regard, the implementation of "Good to Great" is still in its early stages. The Department is expecting the regions to use the feedback from QSR data and other indicators of Child and Family Team process-related performance not just to measure system performance, but to improve case practice in these core areas. A specific protocol that establishes expectations for follow up by the regions in response to the regional QSR results is being piloted for the 2008-2009 QSR.

The Department expects to see the results of this work reflected in improved QSR scores for core system performance and in the increased frequency of and broader participation in Child and Family Team Meetings.

While it will be important for the Department to track the Child and Family Team Meeting data to assess its efforts to improve the quality of the team meetings, the success of the Child and Family Team process may be better measured by what occurs between meetings. In this respect, the Department's continuing struggle to ensure that children in foster care visit regularly with their parents and siblings (and the decline in performance in this area over the past year) is particularly concerning. Increased participation of parents and older children in Child and Family Team Meetings is unlikely to indicate real improvement for families if the Department remains unable to ensure that something as basic to child well-being and successful reunification as positive parent-child contact is occurring between meetings.

In the TAC's view, the approach that the Department is taking to improving case practice—the investment in the “Good to Great” initiative and the focus on better utilization of the QSR—remains a reasonable one, and additional time may be needed to produce the intended results. In this report, therefore, we are not recommending a change in strategy, but rather re-emphasizing the importance of real, measurable improvement in the quality of practice during the next monitoring period.

2. Improving Resource Family Recruitment and Retention

The Department has recognized that the trauma and disruption that a child experiences when removed from his or her family can be greatly reduced, and services and supports most effectively delivered, when that child is placed in a family setting, within the child's home community, and whenever possible, with a family with whom the child already has a connection. Well trained and actively involved resource parents play a vital role in supporting the safe reunification of children with their families when reunification is possible. And for those children who cannot safely return home, the resource families with whom they have been placed in temporary foster care often become their permanent families.

The Department has done a good job of increasing the percentage of children served in family settings; however, the total number of resource homes serving DCS children has been steadily declining over the past 18 months. The Department recognizes that it does not have the range and number of resource homes that it needs in each region to serve the children coming into care from that region. When the supply of resource homes is so tight, the prospects that the resource homes available will afford the right match for a particular child are diminished. This increases the likelihood of placement of children far from their home communities, increasing the trauma associated with separation from family and friends and diminishing their prospects for permanency.

In the September 2007 Monitoring Report, the TAC identified two areas that warranted special focus if Tennessee is to succeed in its effort to provide a good resource home match for every child who requires placement.

The first of these is the Department's ability to support and retain its current resource families. At least some attrition and some of the challenges to successful recruitment result from the gap between the level of day-to-day involvement and support that both the *Practice Model* and DCS policy envision for its resource parents and the actual day to day experience of a significant number of resource parents.

Improved communication between case managers and the resource parents working with the children served by those case managers and improved responsiveness when resource parents are encountering difficulties in getting services or supports for children in their home or with the quality or effectiveness of the services would reasonably be expected to improve retention rates and make recruitment of new families easier. One of the most effective ways of improving responsiveness and communication with resource parents is to make sure that they are involved members of an active Child and Family Team. (The CFTM data on resource family presence at team meetings reflects opportunity for improvement in that regard.)

The Department's recent focus on getting feedback from both current and former resource parents—through the Foster Parent Advocacy Program, the All Families Matter Hotline, and exit interviews with former resource parents—is a promising strategy for identifying additional ways to improve resource parent support. However, while it appears that there are now better formal structures for resource parents to voice their concerns to Department staff, it is not clear that there is an effective CQI process in place to ensure that those concerns are addressed in any systematic way.

In addition to increasing capacity by improving retention, there is considerable opportunity for Tennessee to increase its resource home capacity through child-specific recruitment focused on the child's natural circle of support. The best match for a child is often a person with whom the child already has a positive relationship.

The Department has recognized that it has relatively few kinship resource homes compared to many other child welfare systems and is pursuing a number of strategies to increase its identification and utilization of kinship homes. It appears that these strategies are beginning to show some success.

After several years of decline in the percentage of children in kinship resource homes (from 18.2% in 2003 to 16.3% in 2005), in 2007 the percentage of children placed in kinship homes increased to 18.6%.⁶ Because some regions far exceeded the statewide percentage, the Department has concluded that it has considerable opportunity for improvement by working with individual regions.

Two region specific kinship home initiatives are underway, to identify and address the barriers to more effective identification, training, approval, and support of kinship resource families. The Department expects to be able to use the lessons learned from these initiatives to improve utilization of kinship resource homes statewide. The Department anticipates that over the next 12 months it will be able to demonstrate both statewide and regional improvements in the utilization of kinship resource families, over and above those achieved in 2007.

Improvements in both the Child and Family Team Process and in resource home recruitment and retention should have a positive effect on two other areas, which though still challenging, have seen some promising developments over the past year: placement stability and transition of older youth to adulthood.

3. Placement Stability

The September 2007 Monitoring Report identified placement instability as a critical area: too many children experience further disruption while in foster care, moving from one home to

⁶ The Department generally uses the term "kinship resource home" to refer to both resource homes headed by relatives (persons with whom a child has a blood relationship) and resource homes headed by fictive kin (persons who are not related by blood to a child but with whom the child has a significant pre-existing relationship, such as a teacher, a church member, or a family friend).

another, from one school to another. The Department has been pursuing a number of strategies to address this challenge and recent data suggests on-going incremental improvement in placement stability for more recent entrants into foster care. There was a four percentage point increase (from 84% to 88%) in the proportion of children with two or fewer placements in the previous 12 months for children in custody between July 1, 2007 and June 30, 2008 compared to children in care during calendar year 2006. In addition, of those children entering placement in 2006, 78% experienced no more than two placements over a two-year window of observation, compared to 76% of those who entered in 2005 and 69% of those who entered in 2002 (over a comparable two-year window of observation). This progress is encouraging, but continued gains will be necessary in order to meet the requirements of the Settlement Agreement.

4. Youth Transitioning to Adulthood

The September 2007 Monitoring Report also expressed concerns about the large number of older youth who do not receive services and supports necessary for a successful transition to adulthood and significant numbers of children who “age out” of foster care without permanent families and without the supports they need to succeed.⁷ Over the past year, the Department has taken some encouraging steps to address these concerns. The Department has integrated the Ansell-Casey Independent Living Assessment and the Independent Living Plan into the core case planning process for older youth. All permanency plans for older youth must address the service needs identified by the Ansell Casey.⁸

Although it is too early to tell whether this required focus on Independent Living (IL) issues in the plan will actually result in older youth receiving the services and supports they need, the Department’s increased attention to improvement strategies targeting this population makes sense. Over the course of the next monitoring period, the Department expects to be able to demonstrate better case planning and service provision for older youth and, as a result, reduction in the number of children “aging out” of foster care without a permanent family and/or without post-custody support services to help them succeed.

5. Maintaining Child and Family Contact

The Department recognizes the importance of maintaining regular contact between children in foster care and their parents and siblings. For children for whom reunification is the permanency goal, frequent face-to-face contact is not only critical to reducing the trauma associated with removal and preserving the bonds between parent and child, but is also essential for effective therapeutic work with the family in support of reunification.

Unfortunately, the Department continues to have difficulty ensuring that children get to visit with their parents with the frequency that good practice and the Settlement Agreement require. Of

⁷ The term “age out” refers to the type of exit from foster care for a child who leaves foster care at age 18 without achieving permanence.

⁸ TNKids automatically generates IL related fields in the permanency plans for older youth and will not allow a plan to be completed unless those fields are populated.

particular concern is that DCS performance in this critical area has declined since March 2007. In June 2008, children and parents visited twice per month in 22% of the cases (compared to 50% required by the Settlement Agreement and 27% in March 2007), and of the remaining cases, 23% visited once per month (compared to 60% required by the Settlement Agreement and 29% in March 2007).

Because the inability to achieve regular parent-child visits threatens to undermine much of the Department's other good work to promote permanency, it is important that DCS now move quickly to identify the barriers to regular parent-child contact and implement strategies to overcome those barriers.

6. Improving the Quality and Availability of Prevention, Family Preservation and Reunification Services and Supports

The Department has appropriately chosen as the focus of *Needs Assessment IV* the quality and availability of community based services to support families. Access to an array of high quality non-custodial services is essential if the Department is going to be able to safely and responsibly respond to situations that place children at risk but do not require their removal from their families. Such services are also important to the Department's ability to support the safe and successful return of children in foster care to their families.

At present, the Department has far less information available about these services than it does about services provided to children who have been removed from their homes. While there is some variation across regions, it is generally true that the Department has at best limited ability to evaluate either the sufficiency or the quality of in-home services. For the first several years of the reform effort, this issue appropriately received somewhat lower priority than critical issues related to achieving permanency for children in out-of-home care. Now, however, it will be critical for DCS to bring to bear some of the same strategies—clearer expectations for providers, regular evaluation, and performance-based contracting—to non-custodial services. The Department's progress in carrying out *Needs Assessment IV* has been slow and uneven in comparison to many other areas of its work, and this issue will require increased attention during the next monitoring period.

Conclusion:

In the year that has passed since the TAC's last monitoring report, the Department has been able to maintain many of its accomplishments, while addressing fiscal challenges occasioned by developments on the state and federal levels. It is critical that the Department make progress over the next twelve months in addressing the key challenges discussed above in order to achieve the results envisioned by the Settlement Agreement.