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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WHATCOM COUNTY

JESSICA BRAAM, et al.

Plaintiffs,

v.

STATE OF WASHINGTON, DENNIS
BRADDOCK, UMA AHLUWALIA, et
al.

Defendants.

Case No. 98 2 01570 1

FIFTH AMENDED COMPLAINT

(JUDGE DAVID A. NICHOLS)

COME NOW Plaintiffs, by and through their attorneys, Brett & Daugert, Timothy C. Farris of counsel, and as for their cause of action allege as follows:

I. PARTIES

1.1 J.B. is a minor child and a resident of Whatcom County, Washington. She brings this lawsuit by and through her guardians, Dale and Vickie Braam. The Department placed J.B. in at least 15 different placements across the State of Washington during a ten-year period. The State placed J.B. with the Braam family, who had inadequate training to parent a child with

1 J.B.'s problems. The Defendant did not offer the Braam family training to adequately care for
2 J.B.'s needs. J.B. is a brittle diabetic, and the Defendant placed her into a foster home that had
3 no training whatsoever in the management of diabetes. As a result of the lack of training, J.B.'s
4 health was significantly endangered within days of her placement in this foster home. The State
5 unnecessarily separated J.B. from her three brothers and her sister. The Defendant did not
6 provide J.B. with adequate and appropriate mental health therapy. J.B. is representative of the
7 class because she has experienced multiple placements, was separated from siblings, was placed
8 with foster parents who were untrained to care for her, and was denied necessary mental health
9 treatment.
10

11 1.2 T.O. is a minor child and a resident of Pierce County, Washington. He brings this
12 lawsuit by and through his guardians, David and Diane Olson. T.O. entered foster care when he
13 was six months old, and the State placed T.O. in at least ten placements during his first three
14 years in foster care. When T.O. was two years old, the State separated him from his older
15 brother. When T.O. was three years old, he was found to be high priority for mental health care.
16 The State placed his name on a waiting list and wrote that unless there is a crisis, he would have
17 to wait for an opening. This child is representative of the class because he has experienced
18 multiple placements, was unnecessarily separated from his sibling, and was denied necessary
19 mental health treatment.
20

21 1.3 S.S. is a minor child and a resident of King County, Washington. He brings this
22 lawsuit by and through his court-appointed guardian ad litem, Cat Zavis. S.S. entered foster care
23 when he was four years old and lived in at least 12 foster placements by the time he was nine
24 years old. The State separated S.S. from his four siblings and placed him in unsafe/inappropriate
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1 placements where the foster parents were not trained in how to deal with his behavior. One
2 untrained foster parent disciplined him by twisting his nipples until they bled, and another made
3 him eat hot peppers when she suspected he was lying. This child is representative of the class
4 because he has experienced multiple placements, separation from siblings, was placed with foster
5 parents who were untrained to care for him, and was placed in unsafe/inappropriate placements.
6

7 1.4 I.H. is a minor child and a resident of King County, Washington. She brings this
8 lawsuit by and through her guardians, David and Mary Hardin. I.H. lived in no less than 45
9 placements during the time she was in foster care. When I.H. was four years old, the State
10 separated her from her sisters and brother. The State did not approve the type or amount of
11 therapy that was recommended for I.H. and did not provide her with therapy when she first
12 entered foster care, despite allegations that her biological father sexually abused her. Many of
13 the foster homes the State placed I.H. in were not trained to handle I.H.'s behaviors. When the
14 State had no placement options available for her, she had to sleep on the floor in the DSHS
15 offices or had to remain in detention until a placement was found. I.H. was raped while living in
16 a foster home by a boy who lived in the foster home. This child is representative of the class
17 because she has experienced multiple placements, was separated from her siblings, was denied
18 necessary mental health treatment, was placed with foster parents who were untrained to care for
19 her, was placed with foster parents who were not informed of her history, and was placed in
20 unsafe placements.
21

22 1.5 E.H. is a minor child and a resident of King County, Washington. E.H. lived in
23 no less than 24 placements during the time she was in foster care. When E.H. was three years
24 old, the State separated her from her sisters and brother. The State did not provide her with
25

1 therapy when she first entered foster care, despite physical evidence that her biological father
2 sexually abused her, and provided her with inadequate mental health therapy while in foster care.
3 E.H. brings this lawsuit by and through her guardians, David and Mary Hardin. This child is
4 representative of the class because she has experienced multiple placements, was separated from
5 her siblings, was denied necessary mental health treatment.

6
7 1.6 T.C. is a minor child and a resident of Island County, Washington. He brings this
8 lawsuit by and through his guardians, Kevin and Traci Christensen. T.C. was placed in one
9 foster home after another who were untrained to care for him. When DSHS placed him in the
10 home of Kevin Christensen, DSHS failed to provide the Christensens with the child's Health and
11 Education Record, Passport or the Child and Family Medical Report. Despite the fact that
12 approximately ten previous foster homes were unable to care for T.C., DSHS placed T.C. in the
13 Christensen home where the parents had no training on how to care for a special-needs child, no
14 experience and where one had a high school degree and the other was a high school dropout.
15 The Christensens were deceived into adopting T.C.. Like many other children in the class who
16 are adopted, the adoption disrupted and T.C. is back in foster care where his parents have had to
17 fight DSHS to get adequate care and mental health care for him. This child is representative of
18 the class because he has experienced multiple placements, was placed with foster parents who
19 were untrained to care for him, was placed with foster parents who were not informed of his
20 history, was separated from his siblings, and was denied necessary mental health care.

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22
23 1.7 S.T. is a minor child and is represented by her adoptive parents Janie and Larry
24 Reynolds. S.T. was two years of age when she was placed in foster care. Defendant moved her
25 approximately 20 times in about two and a half years. As a little girl, her only remaining family

1 was a sibling, but Defendant separated S.T. from her brother and forced her to live alone. S.T.
2 developed health and mental health issues and was placed in foster homes that were inadequately
3 trained/informed to care for her, resulting in the removal of her from these homes. This child is
4 representative of the class because she has experienced multiple placements, was placed with
5 foster parents who were untrained to care for her, was unnecessarily separated from her sibling,
6 was denied necessary mental health treatment and was placed in unsafe placements.
7

8 1.8 M.J. is a minor child who brings this action through his guardian ad litem, Cat
9 Zavis. M.J. is a resident of the Epic Crisis Residential Center in Yakima County, Washington.
10 He has been in over seven placements since November 2003. Twice, he was placed in foster
11 homes where the caregiver did not speak English, the only language M.J. speaks. He requested
12 mental health treatment, and Defendant told him to go to a Regional Support Network – although
13 M.J. had no car and could not drive. He has been placed in a secure CRC for over a month even
14 though by law this type of placement is only an emergency, temporary residence. M.J. was
15 separated from his siblings. He is representative of the class because he has experienced
16 multiple placements, has been denied/delayed inadequate mental health care, has been placed in
17 inappropriate placements, and has been unnecessarily separated from his siblings.
18

19 1.9 H.C.J.D. is a 14-year-old male who brings this action through his guardian ad
20 litem, Cat Zavis. H.C.J.D. is currently a resident of Spokane County. H.C.J.D. has been
21 subjected to over 20 different placements. He has developmental delays and significant mental
22 health issues. DCFS put him in inpatient treatment at an adult psychiatric hospital and left him
23 there for over two months because the Defendant couldn't find him a "more appropriate"
24 (DCFS' statement) placement. The doctors notified DSHS that the placement was "extremely
25

1 inappropriate” and “counter-therapeutic” and asked that he be transferred after a few weeks
2 because his mental health was stabilized. The hospital has no programs for adolescents. The
3 court-appointed social worker indicated that the facility was “being inappropriately used as a
4 housing resource,” and that “it appears necessary to have the Department court ordered to find
5 emergency shelter, as they exhibit no urgency while he is securely confined in the current
6 facility.” He has been separated from his siblings. He is representative of the class because he
7 has been subjected to multiple placements, denial of adequate mental health care, placements in
8 an inappropriate and unsafe placement and unnecessary separation from his siblings.
9

10 1.10 M.L. is a minor child who brings this action through his guardian ad litem, Cat
11 Zavis. M.L. is a resident of Yakima County. M.L. has been subjected to ten or more placements
12 and was inappropriately placed in the Yakima detox facility for three days and commingled with
13 adult substance abusers. M.L. is representative of the class because he has been subjected to
14 multiple placements and placement in an inappropriate/unsafe placement.
15

16 1.11 J.S. is a minor child who brings this action through his guardian ad litem, Cat
17 Zavis. J.S. is a resident of King County. J.S. has been subjected to more than ten placements.
18 J.S. had orthodontia braces put on to correct his teeth. He had braces on for over three years, and
19 for at least one year after they were ready to be removed, because Defendant refused to pay to
20 remove the braces. J.S.’s teeth were significantly damaged as a result. He is representative of
21 the class because he has been subjected to multiple placements and has been denied adequate
22 health care.
23

24 1.12 D.K.A. is a 14-year-old minor who brings this action through his parent, Derick
25 D. Allen. D.K.A. is a resident of King County. D.K.A. has been in three or more placements
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1 while under State care. D.K.A. was moved out of an appropriate foster home because the State
2 wanted to pay a lower rate to his foster parents. D.K.A.'s move to a stable placement with his
3 father was delayed for almost a year solely because of errors by the Defendant. As a result of the
4 changes in placement, his mental health, other health care, and his education were disrupted.

5 1.13 L.M. is a resident of Whatcom County and brings this action through her parents
6 Stephanie Moses and Mark Jansen. She was not provided a mental health assessment when she
7 was taken into foster care. This three-year-old child has been placed in over eight placements in
8 less than one year. In her first placement, Defendant placed her and her two siblings with a
9 grandfather who lived in a Ford Van. The grandfather also had a history of sexually molesting
10 children. Defendant was warned the grandfather had a history of sexually molesting children.
11 She was also separated from her siblings. This child is representative of the class because she
12 has been subjected to multiple placements, lack of necessary mental health care, inappropriate
13 placements and separation from siblings.

14 1.14 K.J. is a resident of Whatcom County and brings this action through his parents
15 Stephanie Moses and Mark Jansen. K.J. was not provided any mental health assessment when
16 he entered foster care. This child has been placed in over eight placements in less than one year,
17 including one placement with his grandfather who lived in a Ford Van Defendant was warned
18 the grandfather had a history of sexually molesting children, yet it continued to place this child
19 and his siblings with this molester. K.J. was also separated from his siblings. This child is
20 representative of the class because he has been subjected to multiple placements, lack of mental
21 health care, inappropriate placements and separation from siblings.
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1 1.15 S.L.J. is a resident of Whatcom County and brings this action through her parents
2 Stephanie Moses and Mark Jansen. S.L.J. was not provided a mental health assessment when
3 she entered foster care. While DSHS stated she would receive mental health treatment in
4 November 2003, DSHS has yet to provide it. This child has been placed in over six placements,
5 including one placement with her two siblings with her grandfather who lived in a Ford Van.
6 Defendant was warned the grandfather had a history of sexually molesting children. Sha -Lane
7 was also separated from her siblings. This child is representative of the class because she has
8 been subjected to multiple placements, denial of necessary mental health care, inappropriate
9 placements and separation from siblings.
10

11 1.16 N.L. is a resident of Clark County and brings this action through his foster parent
12 and guardian ad litem, Jerry Nichols. N.L.'s therapist specifically recommended necessary
13 mental health treatment for him but DSHS refused to pay for it because it did not want to spend
14 the money. N.L. is representative of the class because he has been subjected to multiple
15 placements and been denied necessary mental health care.
16

17 1.17 The Plaintiffs herein have suffered other harmful actions and the description of
18 the harms herein are not complete. Plaintiffs reserve the right to amend the complaint to reflect
19 this and to join other children.
20

21 1.18 Plaintiffs are herein referred to as the "Children".

22 1.19 The State of Washington is a governmental entity.

23 1.20 The Department of Social and Health Services, The Children's Administration,
24 and Division of Children and Family Services are departments, administrations and divisions
25 (respectively) of the State of Washington.

1 1.21 Dennis Braddock is the Secretary of the Department of Social and Health
2 Services.

3 1.22 Uma Ahluwalia is the Assistant Secretary for the Children's Administration in the
4 Washington Department of Social and Health Services.

5 1.23 The Children's Administration oversees the Division of Children and Family
6 Services, which implements and manages the State's foster care system.
7

8 II. CONSTITUTIONAL RIGHTS OF CHILDREN

9 2.1 Plaintiffs are children who are now (or who in the future will be) in the custody of
10 the Department of Social & Health Services foster care system and who while in DSHS custody
11 are placed by the defendants in three or more placements.

12 2.2 The children have a "substantive due process right to be free from unreasonable
13 risk of harm, including a risk flowing from the lack of basic services, and a right to reasonable
14 safety...the State, as custodian and caretaker of foster children must provide conditions free of
15 unreasonable risk of danger, harm, or pain, and must include adequate services to meet the basic
16 needs of the child." Braam v. State of Washington, 150 Wn.2d 689, 699-700 (2004). This is a
17 "broad" right that encompasses all services "reasonably necessary in protecting the child from
18 harm," Id. at 699, n.4, and "harm" must be "given its ordinary meaning of physical or mental
19 damage," Id. at 700.

20
21 2.3 The Defendants violate the substantive due process rights of the children by the
22 following actions, failures to act, and practices, among others. These actions, failures to act, and
23 practices, among others, individually and collectively, substantially depart from accepted
24 professional standards and practices and subject the children to danger, harm, and pain, and to
25

1 the unreasonable risk of danger, harm, or pain, and deny adequate services to meet the basic
2 needs of the children:

- 3 • The Defendants fail to provide adequate mental health assessments and treatment
4 for children in the class.
- 5 • The Defendants fail to adequately train, inform, support, supervise, and oversee
6 foster parents, and therefore fail to allow and require the foster parents to provide
7 adequate care for children in the class;
- 8 • The Defendants fail to provide sufficient numbers of reasonably safe and
9 adequate foster care placements, homes, and programs to protect the children in
10 the class from harm and the unreasonable risk of harm;
- 11 • The Defendants fail to provide a sufficient number of adequately trained staff to
12 visit and supervise foster homes and placements on a schedule that protects
13 children in the class from harm and an unreasonable risk of harm;
- 14 • The Defendants place children in unsafe placements (DSHS offices, homes of
15 sexual offenders, violent offenders and detention not pursuant to lawful court
16 order, among other things);
- 17 • The Defendants unnecessarily and inappropriately separate children from their
18 siblings and fail to provide an adequate number of homes to prevent unnecessary
19 separation of siblings;
- 20 • The Defendants subject children in the class to unnecessary and avoidable foster
21 care placement changes, unreasonably creating insecurity, mental and physical
22 harm, lack of safety, educational disruption and an increased unreasonable risk of
23 harm. These unnecessary and avoidable placements changes are proximately
24 caused by the defendants' failures to provide adequate basic services and safety to
25 children in the class as described above;
- The Defendants fail to provide reasonably safe and secure homes which result in
children leaving foster care without an adequate education or independent living
skills and forcing them into homelessness, thus subjecting the children to harm
and an unreasonable risk of harm;
- The Defendants subject children in the class to harm and an unreasonable risk of
harm by failing to search for children who run away from the state foster care
system and allowing foster children to be homeless (or in other non-state
sanctioned placements) to avoid having to provide services to children;
- The Defendants fail to regularly and frequently visit children in the class and as
direct and proximate result fail to determine and provide for the special needs of
children, fail to provide adequate support to foster parents, fail to prevent
breakdowns in placements, fail to uncover unsafe and/or in appropriate
placements; and
- When adolescent foster children run away from a foster care placement (because
of the harsh conditions) DSHS does not actively search for those children and

1 allows these children to be homeless or in another non-state sanctioned
2 placement.

3 2.4. The Defendants' actions and failures to act described above violate the children's
4 substantive due process rights and subject the children the unreasonable ongoing risk of danger,
5 and harm, and to that physical and mental harm and damage as set forth herein.

6 III. CLASS ACTION

7 3.1 Plaintiffs bring this action as a class action with respect to particular issues
8 pursuant to Washington Court Rules, Rule 23 (a), (b)(1), (b)(2). The plaintiff class includes "all
9 children who are now (or who in the future will be) in the custody of the Department of Social
10 and Health Services foster care system and who while in DSHS custody are placed by Defendant
11 in three or more placements. (Court's Order Granting Class Certification, July 30, 2001)

12 3.2 The class is so numerous that joinder of all members is impracticable. Currently,
13 there are approximately 10,000 children in DCFS custody. Almost one-third of the current
14 population of children in custody have been in three or more placements while in the
15 Defendants' custody.
16

17 3.3 There are questions of law and fact common to the class which include whether
18 specific decisions of DSHS violated the foster children's right to be free from unreasonable risk
19 of harm or violated their right to reasonable safety and whether the decisions substantially
20 departed from accepted professional judgment, standards, or practice.
21

22 3.4 The claims of the named plaintiffs are typical of the claims of the class.

23 3.5 Plaintiffs will fairly and adequately protect the interests of the class as to the
24 particular issues for which the action is maintained as a class action. Plaintiffs are represented
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1 by Timothy C. Farris of Brett and Daugert, PLLC, the National Center for Youth Law and
2 Columbia Legal Services. Their attorneys have extensive knowledge and experience in class
3 actions and the enforcement of the rights of children in foster care. Counsel have the resources,
4 expertise and experience to prosecute this action. Counsel for the Plaintiffs know of no conflicts
5 among the members of the class.
6

7 **IV. BREACH OF DUTY**

8 4.1 The State of Washington violates the Plaintiffs' Constitutional Rights through one
9 or more of the decisions identified herein which result in one or more of the actions and practices
10 identified in 2.3.

11 **V. INJUNCTIVE RELIEF**

12 5.1 Plaintiffs seek injunctive relief enjoining the State from further use of the actions
13 and practices which violate the Constitutional rights of children in foster care and for such
14 further injunctive relief as may be necessary to protect the constitutional rights of children in the
15 State foster care system.
16

17 WHEREFORE, Plaintiffs pray for judgment as follows:

18 1. Declare this a class action under Washington Court Rules, Rule 23 (a), (b) (1) &
19 (2) for the purposes of deciding the entitlement of the plaintiff class to procedural safeguards
20 prior to a change in their foster care placement.

21 2. For a declaratory judgment that the Defendants' policies and practices have
22 violated and/or continue to violate the constitutional rights of the Plaintiffs in violation of 14
23 USC §1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the
24 United States.
25

