

Federal report says DCS out of compliance

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Terms of settlement not yet met

The Tennessee Department of Children's Services remains overwhelmingly out of compliance with the terms of a federal settlement agreement halfway through a court-ordered time frame to overhaul the state's foster-care programs, according to a federal court monitor's report.

Among its findings, the report states that required face-to-face visits between foster children and state caseworkers took place in less than 40% of the cases reviewed by the monitor.

Also, reports of abuse and neglect received timely investigations in only 37% of the cases between July 2002 and May 2003, the report states. The 199-page report is a comprehensive look at the massive state agency.

But DCS spokeswoman Carla Aaron said the department is making progress.

"Mainly, the issues were not whether we were in compliance, but it was whether we were making progress towards compliance," she said. "We're not where we should be, but we're getting there."

U.S. District Judge Todd Campbell charged monitor Sheila Agniel with ensuring that DCS complies with an agreement reached in the case known as Brian A. vs. Sundquist, brought by eight youths on behalf of all Tennessee foster children.

The organization backing the suit is the New York-based Children's Rights Inc.

The May 2001 agreement it reached with DCS gives the agency 54 months to retool its management, training, information systems — and its methods for ensuring the safety and well-being of the state's more than 10,000 foster children.

Agniel found that DCS has failed to comply with 84 of 136 agreement provisions. It is in full compliance with only 24. Agniel's report covers DCS activity Sept. 1, 2001-July 31, 2003.

Briefed yesterday at the Capitol before the report's release, Gov. Phil Bredesen said he understood that the report was "going to shoot us with a large rifle."

Reached later by phone, one of the plaintiffs' attorneys, David Raybin, said, "First of all, this was not a rifle shot. This was a hand grenade."

Asked whether the department's pace of reform would necessitate a hasty return to court, Raybin said: "We would hope that it's not necessary, but it may be inevitable."

The governor yesterday instructed DCS to rectify one issue immediately: Make sure that caseworkers visit foster children as required.

"Not next January — now — how do we now get those people to go out and see the people they need to?" Bredesen said.

The department concedes that it has much work ahead of it.

"Certainly, we recognize that we are not where we need to be in terms of the settlement agreement," Aaron said, adding that the report is a snapshot of a work in progress. "What we are trying to do is instead of trying to change everything in one fell swoop is to bite off smaller chunks that we can work on. So we're trying to identify some very specific areas that we can really work on and make some changes and then move on to other areas as we go through the 54-month time frame.

"Certainly, visiting our children is top priority."

Aaron added that the task is sometimes harder than it first appears. Caseworkers who may have been planning face-to-face visits might suddenly find themselves being whisked to court on behalf of another child. "Different things tug us and pull us different ways. What we need to do is focus on visits."

She said that training the staff is a critical need.

The agency hired hundreds of caseworkers in recent years, she said, "but if you don't have the infrastructure to support that, the training, the supervision, it doesn't work out like you want it to. So we're making sure that we've got the infrastructure to support what we need to do."

DCS Commissioner Michael Miller told the governor "we are making some headway," Aaron said. For example, 95% of the children who have left foster care were reunited with their families within a year.

"Prior to the settlement agreement, kids were languishing in foster care for a long time, months and months and years," Aaron said.

Throughout the litigation, the department has struggled to keep track of its own data and to use that information productively.

The report notes that those problems still exist. Advocates for the state's foster children continue to press for a single, unified database of children in the system, statewide. Raybin likened such a database to one that is in use by the state Department of Correction.

"If we can keep track of our criminals, we ought to be able to keep track of our kids."

The agency portrayed in the report, Children's Rights Inc. attorney Douglas Gray said, seems uncertain about what to do.

"The department doesn't appear to have a coherent plan to get into compliance.

"I think for the defendants to take comfort in this report in any way would be really surprising. I'm sure they will find things to point to, but across the board we see real noncompliance. At this point, it's been long enough and the defendants have to do better."

The settlement

In May 2001 the state settled a major class-action federal civil rights lawsuit initiated by eight foster children, agreeing to appoint an independent monitor to oversee the Department of Children's Services and to implement a host of reforms designed to improve its foster-care and adoption system.

To settle the case, the state pledged to spend at least \$30 million through 2006 for the reforms.

DCS promised to improve caseworker training and decrease the number of children each worker monitors. It agreed to meet strict timetables that would allow the special monitor to measure the speed in which DCS managed the roughly 10,000 foster children in its care.

DCS also promised to fund an independent study of its adoption program to determine whether white children are favored over African-American children, an allegation made in the original lawsuit.