

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Michelle H., by her next friend, Tamara Coppinger <i>et al.</i> ,)	
)	
Plaintiffs,)	C.A. No. 2:15-0134-RMG
)	
vs.)	
)	
Henry Dargan McMaster, in his official capacity as Governor of South Carolina, and Michael Leach, as State Director of the South Carolina Department of Social Services,)	ORDER
)	
Defendants.)	
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)	

Since the filing of this class action lawsuit in 2015 on behalf of the foster children of South Carolina, the original parties to this action and their successors have worked collaboratively to address the serious systemic problems in South Carolina’s child welfare system, most of which are the product of severe underfunding of the system. The parties reached a comprehensive Settlement Agreement in June 2016, which mandated follow-up development of Improvement Plans in a broad range of areas including workload capacity for caseworkers, placement of foster children in as many local and family styled settings as possible, family visitation, and comprehensive health care. (Dkt. Nos. 32-1, 48). With the guidance of Senior United States District Judge Michael Duffy, acting as a mediator, and the able assistance of Court-appointed monitors, Judy Meltzer and Paul Vincent, Defendants presented to the Court Improvement Plans for all areas addressed in the Settlement Agreement and these plans were formally adopted and approved by this Court. (Dkt. Nos. 109, 115, 116, 117, 118, 119, 120).

The Improvement Plans mandated the significant infusion of funds and expanded staff to address the chronic systemic deficiencies in the foster care program, with July 1, 2020 designated as a critical date for the implementation of the State Defendants' obligations under the Settlement Agreement. The parties jointly agreed on the obligations of the Defendants due on July 1, 2020 (Dkt. No. 145), and Governor McMaster included funding for the mandates of the *Michelle H.* Settlement Agreement in his Executive Budget. The Court made it clear in an order dated August 15, 2019 that it would fully enforce the obligations of the Defendants under the Settlement Agreement and detailed those specific obligations that were due on July 1, 2020. (Dkt. No. 152).¹

In March 2020, the historic COVID-19 pandemic swept across the State of South Carolina, as it did much of the world, forcing the closing of most businesses and public life, as well as inflicting chaos on the State's revenues and budgetary process. The pandemic in many ways exacerbated the weaknesses of the State's child welfare system and made some of the critical reforms even more urgent. In a brief special session, the General Assembly recently passed a continuing resolution funding State agencies at their 2019-2020 level for the 2020-2021 fiscal year, with the plan to return in the Fall of 2020 to adopt a revised 2020-2021 State budget once updated financial information becomes available.

In a perfect world, the extraordinary events of the last several months would have no impact on the timing and implementation of the remedies long overdue for the Plaintiff class.

¹ The State Defendants, the Governor and the Director of the South Carolina Department of Social Services ("SCDSS") have been sued in their official capacities and their agreements reached in the settlement of this case are binding on the State of South Carolina. It is well-settled that the Governor, who is vested with the "supreme executive authority" under the South Carolina Constitution, can execute an enforceable agreement on behalf of the State. *See White v. Blue Cross-Blue Shield of South Carolina*, 229 S.E. 2d 854 (S.C. 1976); *King v. Walters*, 109 F.3d 784, 788-89 (7th Cir. 1999); S.C. Constitution, Article 4, Section 1; Fed R. Civ. P. 25(d).

But the reality is that some accommodation must be made to these events—not in the ultimate accomplishment of the *Michelle H.* Settlement Agreement, but in the timing of the implementation of some of its provisions. This Court, and the parties to this suit, remain fully committed to the obligations set forth in the Settlement Agreement, which will ultimately be fully implemented.

Some aspects of the Settlement Agreement have a special urgency because of the effects of the pandemic, which have plainly exacerbated the injuries being suffered by the Plaintiff class. Most notably, the goal of moving foster children from congregate care placements to family type settings requires the immediate application of significant resources because of the dangers of COVID-19 transmission for foster children living in group homes and other congregate settings. As discussed in the status conference of June 22, 2020, the Court **orders and directs** that Defendants implement the following actions by July 1, 2020 due to the effects of the COVID-19 pandemic:

1. SCDSS shall implement the increase in the foster care maintenance payments paid to all foster parents (including kinship parents) in accord with the Court approved schedule set forth in the Order of May 15, 2019 (Dkt. No. 126 at 1-2). This increase is essential for promptly moving as many foster children as possible from congregate care placements to family style placements.
2. SCDSS shall increase its capacity for licensure of kin, fictive kin, and non-related foster parents in accord with the Defendants' plan set forth in its letter to the Court of June 19, 2020 (Dkt. No.198 at 3-5). This plan is essential to identifying and licensing more family setting placements to facilitate the prompt movement of as many foster children as possible out of congregate

care placements.

3. SCDSS shall implement an intensive case-by-case review of all children presently placed in congregate care, in accord with the plan set forth in the Defendants' letter of June 19, 2020 (*Id.* at 6-8). This plan is essential to facilitating the prompt movement of as many foster children as possible from a congregate setting.

The parties are **further directed** to return to mediation to seek common ground, if possible, on implementation dates for other aspects of the Settlement Agreement that were due for performance on July 1, 2020. The Court has appointed retired South Carolina Chief Justice Jean H. Toal to serve as a mediator. The Court is prepared to consider a brief delay until July 1, 2021 in some aspects of the Settlement Agreement so long as critical elements, most particularly those impacted by the COVID-19 pandemic, are addressed in this fiscal year. As guidance to the Court's thinking, the parties should endeavor to reach agreement that fully implements in the 2020-2021 fiscal year the following:

1. An increase in SCDSS staff to serve the anticipated 400 new foster children projected to enter the foster care program once public schools reopen and the normal flow of abuse and neglect reports resumes following the COVID-19 pandemic. SCDSS presently estimates that it will require 26 new caseworkers, 6 supervisors and additional staff related to this anticipated influx of foster children. (Dkt. Nos. 194 at 3; 198-1).
2. The provision of services necessitated by the movement of foster children from congregate care to family placements. SCDSS has identified these anticipated additional services to include financial assistance, food and health

care, support groups and professional care, enhanced case management, community volunteer and donation programs, and legal assistance. (Dkt. No. 198-1).

3. Development of services and supports that SCDSS has indicated are needed to create, bolster, stabilize and redeem placements for foster children currently placed out of county or to make in-county alternatives to out of county placements or a step-down from congregate care. (*Id.*).
4. Reimbursements identified by SCDSS as necessary to defray expenses that would burden prospective foster parents in promptly meeting licensure requirements such as training, medical exams, and the installation of smoke detectors, hard wiring, and fire extinguishers. (*Id.*).
5. An increase in SCDSS staff with additional nurses and administrative staff to facilitate the full implementation of the Healthcare Plan, made particularly critical in light of the health issues and the need for medical services associated with the COVID-19 pandemic.
6. Implementation of obligations under the Settlement Agreement regarding reducing caseworker caseloads and increasing salaries in accord with the SCDSS Workload Implementation Plan, with a revised plan for partial implementation in the 2020-2021 fiscal year and the remainder in the 2021-2022 fiscal year. (Dkt. Nos. 119, 119-1 at 5-7).

The parties are **directed** to participate promptly in mediation, likely meeting remotely via a digital platform, and to report to the Court on or before July 15, 2020 whether a joint plan has been agreed to by the parties. Any plan must be approved by the Co-Monitors. If no agreement

is reached by July 15, 2020, the parties on that date shall set forth in writing their respective positions. The Court will follow this order with an additional order addressing the balance of the parties' obligations under the Settlement Agreement.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

June 22, 2020
Charleston, South Carolina