IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

D.G., by Next Friend G. Gail Stricklin; et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 08-CV-074-GKF-FHM
	)	
BRAD YARBROUGH, Chairman of the Oklahoma Commission for Human Services, et al.,	)	
	)	
	)	
Defendants.	)	

COMPROMISE AND SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement (the "Settlement Agreement") has been executed on the dates set forth on the execution page hereof but made effective as of December 15, 2011, by and between the Class Representatives (as defined below in Paragraph 1.4), on behalf of themselves and as representatives of the Plaintiff Class (as defined below in Paragraph 1.11), Class Counsel (as defined below in Paragraph 1.2) and Settling Defendant (as defined below in Paragraph 1.17). The settlement contemplated by this Settlement Agreement is conditioned on the approval of the United States District Court for the Northern District of Oklahoma, as required by Rule 23 of the Federal Rules of Civil Procedure.

RECITALS

A. *Whereas,* the Class Representatives, on behalf of themselves and as representatives of the Plaintiff Class, have asserted various claims against Settling Defendant in the Class Action Litigation (as defined below in Paragraph 1.1) as more fully described in the Complaint, attached hereto as Exhibit A;

B. *Whereas,* Settling Defendant has denied those various assertions and has defended vigorously against them;

C. *Whereas,* the Class Representatives, on behalf of themselves and as representatives of the Plaintiff Class and Settling Defendant have worked to resolve their differences and have elected to settle those differences as set forth in this Settlement Agreement;

D. *Whereas,* the parties intend by this Settlement Agreement to resolve any and all Released Claims (as defined below in Paragraph 1.14) of the Settlement Class against the Released Parties (as defined below in Paragraph 1.15) in accordance with the terms hereof;

Now, therefore, the Class Representatives, on behalf of themselves and as representatives of the Plaintiff Class, the Plaintiff Class, and Settling Defendant, in consideration of the execution of this agreement and the mutual recitals and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

DEFINITIONS

1.1 **Class Action Litigation** shall mean D.G., by Next Friend, G. Gail Stricklin, et al., v. Brad Yarbrough, Chairman of the Oklahoma Commission for Human Services, et al., Case No. 08cv0074-GKF-FHM now pending in the United States District Court for the Northern District of Oklahoma ("Court").

1.2 **Class Counsel** shall mean Angela R. Vicari, Frederic Dorwart, Ira P. Lustbader, John S. Cahalan, Marcia R. Lowry, Paul DeMuro, Phillip A. Geraci, R. Thomas Seymour, Scott A. Graham, William Kapell, Miriam F. Ingber, Patrick S. Almonrode, Jodi K. Miller, Laurence D. Borten, Philip G. Barber, and Sarah T. Russo.

1.3 **Class Counsel Fees and Expenses** shall mean reasonable fees and expenses of Class Counsel in an amount to be determined by the Court, provided the services and expenses of Frederic Dorwart Lawyers have been and will be provided pro bono for the benefit of the Plaintiff Class. The Court shall retain jurisdiction to make this determination. The Named Plaintiffs and Next Friends shall not seek or be awarded compensation in return for their role in the Class Action Litigation. Settling Defendant stipulates that Class Counsel is entitled to Class Counsel Fees and Expenses but reserves the right to dispute the amount of Class Counsel Fees and Expenses.

1.4 **Class Representatives** shall mean the named plaintiffs appointed by the Court in the Class Action Litigation.

1.5 **Final Approval** shall mean the date upon which the Judgment approving the settlement becomes Final. The word "Final" means the latter of the date of final affirmance on an appeal, the expiration of the time for a petition for writ of certiorari, and if certiorari is granted, the date of final affirmance following review pursuant to that grant, or the final dismissal of any appeal or the final dismissal of any proceeding on certiorari, or if no appeal is filed, the expiration of the time for the filing or notice of any appeal from the Court's final decision. Objections or conflicting claims regarding rights of Class Members to opt out or any other claim shall not affect Final Approval unless so ordered by the Court.

1.6 **Hearing for Preliminary Approval of Settlement** means proceedings before the Court for the purpose of presenting a motion for preliminary approval of this Settlement Agreement and an order preliminarily approving this Settlement Agreement in substantially the form attached hereto as Exhibit B.

1.7 **Judgment** means the Order of the United States District Court for the Northern

District of Oklahoma finally approving the Settlement Agreement among Settling Defendant and the Settlement Class, which shall be substantially in the form of Exhibit C hereto.

1.8 **Foster Parent** means any person approved by the Department to act as custodian of or to take custody of any Plaintiff Class Member.

1.9 **Notice of Settlement** means the notice to the Class Members who are not named class representatives of: (a) this Settlement Agreement; (b) Class Counsel's request for an award of Class Counsel Fees and Expenses; and (c) the time, date and place of Settlement Fairness hearing. The Notice of Settlement shall be substantially in the form of Exhibit D hereto.

1.10 **The Oklahoma Department of Human Services** is referred to herein as "the Department" or "DHS."

1.11 **Plaintiff Class** or **Class Member** or **Plaintiff Class Member** or **Settlement Class** or **Settlement Class Member** means each member of the Class certified in the above action by virtue of the Order dated May 8, 2009 in this Class Action Litigation. (Dkt. # 272). The Plaintiff Class is more specifically described as follows:

> All children who are or will be in the legal custody of the Oklahoma Department of Human Services (1) due to a report or suspicion of abuse or neglect; or (2) who are or will be adjudicated deprived due to abuse or neglect.

1.12 **Plan of Notice** means the following procedures for providing Notice of Settlement to the Class Members. Notice of Settlement will be made by the Department by (a) posting the Notice of Settlement in a conspicuous and public location within each of its offices, (b) providing the Notice of Settlement to each group home, congregate living facility, institution, and child placing agency where Plaintiff Class Members are placed or which the Department contracts with for the provision of foster care services to Plaintiff Class Members, (c) providing the Notice of Settlement to the judges and clerks of each family court in the state of Oklahoma, and (d) providing the Notice of Settlement to each Class Member who is fourteen years or older by mailing the Notice of Settlement to that Class Member's current foster home.

1.13 **Preliminary Approval Date** shall mean the date the Court enters an order preliminarily approving the settlement pursuant to the motion filed in accordance with paragraph 3.1.

1.14 **Released Claims** means all claims and causes of action, known or unknown, whether arising in contract, tort or based upon constitutional, statutory, or regulatory obligations, and/or based upon any theory whatsoever, arising or accruing against the Released Parties on or before the date of Final Approval, relating to the Plaintiff Class Members and activities involving the Plaintiff Class Members, and any duties, actions or inactions of the Released Parties with respect thereto, which were asserted or could have been asserted in the Class Action Litigation.

1.15 **Released Parties** shall mean the Settling Defendant, including any entity or agency of the State of Oklahoma, past and present, and its respective agencies, officers, and elected or appointed officials.

1.16 **Settlement Fairness Hearing** means the proceedings to be held before the Court to determine whether this Settlement Agreement should be finally approved as fair, adequate and reasonable; and whether the Judgment should be entered.

1.17 **Settling Defendant** shall mean the Oklahoma Commission for Human Services, including all of its current members, any members serving during the Class Action Litigation, and any future members serving during the term of the Settlement Agreement, the Director of Human Services (currently Howard Hendrick), and the Department.

1.18 **Co-Neutrals** means Kathleen G. Noonan, Kevin M. Ryan, and Eileen Crummy. In no event shall there be less than two Co-Neutrals. In the event one of the Co-Neutral becomes unable or unwilling to serve or to continue to serve as a Co-Neutral, then the Co-Neutrals shall consist of the remaining two. The Co-Neutrals may mutually agree that only two Co-Neutrals are necessary for the purposes of the Settlement Agreement and, by agreement, one may resign under those circumstances, leaving only two Co-Neutrals and the third Co-Neutral need not be replaced. In the event any of the Co-Neutrals becomes unable or unwilling to serve or to continue to serve as a Co-Neutral and there are only two Co-Neutrals at that time and no agreement has been reached that only two Co-Neutrals are necessary, then Settling Defendant and Class Plaintiffs shall attempt to agree, in consultation with the remaining Co-Neutral(s), on a replacement. If, within thirty (30) days, no agreement is reached, the Settling Defendant and Class Plaintiffs shall each submit two names to the remaining Co-Neutral(s). The remaining Co-Neutral(s) shall, within thirty (30) days, select a replacement Co-Neutral(s) from the list, subject to the approval of Settling Defendant and Class Plaintiffs, which approval shall not be unreasonably withheld. If Settling Defendant or Class Plaintiffs withhold approval, then the selection shall be governed by the provisions of the Federal Arbitration Act ("FAA"). If all three Co-Neutrals become unable or unwilling to serve or continue to serve, then the selection of new Co-Neutrals shall be governed by the provisions of the "FAA" as those provisions relate to the selection of a replacement arbitrator. The Co-Neutrals may adjust any time frame contained within this Settlement Agreement that, in their sole discretion, is impacted by the loss of one or more Co-Neutrals.

AGREEMENT

2.1 **Commencement of Obligations.** The obligations of the Settling Defendant contained in the Settlement Agreement shall commence on the Preliminary Approval Date. However, Class Plaintiffs may not enforce those obligations, and no award may be rendered or entered with respect to those obligations, until the date of Final Approval.

2.2 **Dismissal with Prejudice and Scope of Court's Continuing Jurisdiction.** Upon Final Approval of this Settlement Agreement, as defined in Section 1.5, the parties will file a stipulation of dismissal, requesting that the Court dismiss the Class Action Litigation with prejudice. A dismissal with prejudice is a condition precedent to the Department's obligations and commitments in Section 2.10, except as provided in Section 2.1. Notwithstanding the dismissal of the Class Action Litigation with prejudice, the District Court shall retain limited jurisdiction to enter necessary orders enforcing the Co-Neutrals' decisions as provided for herein, and to consider any appeal of the Final Report provided in 2.15(b). The parties stipulate and agree not to contest the jurisdiction of the Court for enforcement purposes and appeal purposes and approval of Class Counsel Fees and Expenses.

2.3 **Acknowledgement of Final Approval.** Within ten (10) business days after the date of Final Approval, Class Counsel shall file with the Court a pleading acknowledging that the Judgment has become final and that the Released Claims have been released.

2.4 **Claims Released.** Each member of the Settlement Class releases the Released Claims against the Released Parties on the date of Final Approval.

2.5 **Governing Law.** This Settlement Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Oklahoma (without regard to any conflict of laws principles).

2.6 **No Waiver.** No delay or omission by any party in exercising any of their rights under this Settlement Agreement will operate as a waiver of that or any other right. A waiver or consent given by a party on anyone occasion is effective only in that instance and will not be construed as a bar or waiver of any right on any other occasion, unless otherwise agreed in writing.

2.7 **Nature of Agreement.** This Settlement Agreement shall be binding and enforceable against the parties, but it is not, nor shall it be construed to be, a consent decree.

2.8. **Co-Neutrals.**

(a) The Co-Neutrals shall act as arbiters of any dispute between the parties arising out of this Settlement Agreement, whether or not the subject matter of the dispute is specifically identified herein. The Co-Neutrals decision regarding any dispute shall be final, and the Co-Neutrals may establish, in their sole discretion, the procedure for resolving any dispute, except that the Co-Neutrals may not, without written permission of all parties and approval of the Co-Neutrals, alter the dates or the timing expressly identified in this Settlement Agreement (except as set forth in Section 1.18).

(b) The parties agree that neither they, nor any employee or agent of either party, shall have any supervisory authority over the Co-Neutrals or their activities, reports, findings, or recommendations.

(c) The retention of the Co-Neutrals shall be conducted pursuant to the procedures set forth in this Settlement Agreement.

(d) The Co-Neutrals shall have free and complete access to records maintained by DHS, its divisions and any successor agencies or divisions, and by its private contract agencies, following the procedures set forth in Title 10A, Section 1-6-103(A)(9) of the Oklahoma Statutes. The Co-Neutrals shall also have free and complete access to the staff of DHS; its divisions and any successor agencies or divisions; persons within the executive branch; and DHS shall facilitate access to private agencies working with DHS; and children in the custody of DHS.

(e) After execution of the Settlement Agreement, the Department shall, as soon as practical, retain the services of the Co-Neutrals for the period of the Settlement Agreement; however, the Co-Neutrals may begin work under the Settlement Agreement as soon as it is approved by the Contingency Review Board (as contemplated in Section 5.10). Payment of the Co-Neutrals shall be addressed as follows: (1) The Department shall enter into a professional services contract to secure payment of the Co-Neutrals, and the first such contract shall be for a period of not less than one year with the option to renew on an annual basis up to three years; and (2) As part of the professional services contract, the Co-Neutrals shall have a budget and staff sufficient to allow the Co-Neutrals to carry out the responsibilities described in the Settlement Agreement, and may contract with such experts or consultants as the Co-Neutrals may deem appropriate. The Co-Neutrals agree to reasonable and customary fees and to actual expenses which will be reimbursable pursuant to the terms of the professional services contract. Nothing in this Settlement Agreement shall be read to prevent the involvement of a foundation or other third party in the funding of all or part of the annual expense of the Co-Neutrals' work pursuant to this Settlement Agreement (whether or not a professional services contract is executed).

(f) The Co-Neutrals are not a state or local agency or an agent thereof, and accordingly the records maintained by the Co-Neutrals shall not be deemed public records subject to public inspection. Neither the Co-Neutrals nor any person or entity hired or otherwise retained by the Co-Neutrals to assist in furthering any provision of this Agreement shall be liable for any claim, lawsuit, or demand arising out of the Co-Neutrals' good-faith performance pursuant to this Agreement. Except as otherwise required by law, any reports, opinions, or documents used or prepared by the Co-Neutrals or their staff shall be used for the purposes of this case only and may not be used for any other purpose, without the prior written consent of Defendant.

2.9 **Enforcement of Co-Neutral Decision.** With the written majority agreement of the Co-Neutrals (and only with such agreement), any decision of the Co-Neutrals may be presented to the Court for entry as a judgment in accordance with the procedures set forth in the FAA. The parties acknowledge that the FAA may, or may not, apply to the subject matter of the Lawsuit; therefore, the parties expressly incorporate the procedural provisions of the FAA into this Settlement Agreement as if those provisions were expressly set forth herein, except that the provisions of the Settlement Agreement control in the event of any inconsistencies between the FAA and the Settlement Agreement. A decision of the Co-Neutrals can be vacated by the Court only upon a judicial determination that one or more of the grounds set forth in 9 U.S.C. § 10(a)(1)-(4) exists. Once a decision of the Co-Neutrals has been entered as a judgment by the Court, it may be enforced by Class Counsel, the Class Representatives and the Plaintiff Class.

2.10 **Child Welfare Plan.**

(a) By March 30, 2012 the Department shall submit a child welfare plan ("Plan") to the Co-Neutrals and Class Plaintiffs and provide a copy to counsel for the Group Homes (as defined in dkt. #2). The Department may consult with the Co-Neutrals during the Plan development process. The Governor of Oklahoma may designate members of her staff and the Speaker of the Oklahoma House of Representative and President Pro Tempore of the Senate may select members of the Legislature who will participate in the development of the Plan. The Plan will set forth: specific strategies to improve the child welfare system as it relates to the Performance Areas (as defined below); specific structural and/or organizational changes needed to implement the strategies; and the anticipated cost for implementation. The Plan must specifically target, but need not be limited to, the following performance areas ("Performance Areas"):

(1) child abuse and neglect in care,

(2) the number of foster homes available for children in need of therapeutic care,

(3) the number of foster homes available for children not in need of therapeutic care,

(4) visitation of children by case workers,

(5) continuity of visitation by the same case worker,

(6) on an annual basis, the average number of placements experienced by a child two years old or older, excluding the ten percent of children with the least number of changes in placement and the ten percent of children with the highest number of changes in placement,

(7) the actual number of placements for each child two years old or older that is in the ten percent of children two years old or older with the highest number of changes in placements,

(8) on an annual basis, the average number of placements experienced by a child under two years old, excluding the ten percent of children with the least number of placements and the ten percent of children with the highest number of placements,

(9) the actual number of placements for each child under two years old who is in the ten percent of children under two years old with the highest number of placements,

(10) as of March 31 and September 30 of each year, the number of children in shelters delineated by even ages (i.e., younger than 2 years, 2 years old to 4 years old, 4 years old to 6 years old, ...),

(11) during the same six month time period (April through September and October through March), the average stay in a shelter for each age group identified in subparagraph (10), excluding the ten percent of children with the shortest stay in a shelter and the ten percent of children with the

longest stay in a shelter,

(12) the actual length of stay for each child that is in the ten percent of children with the longest stay in a shelter,

(13) permanency (i.e., the child exits the system with a connection to a permanent family),

(14) adoption, including adoption failure rates, and

(15) caseload.

(b) The Department shall consult with the Co-Neutrals to identify a data expert to establish baseline measures and target outcomes for the Performance Areas. It is permissible for the expert to be an existing consultant to, or employee of, the Department, but the expert shall be subject to the Co-Neutral's approval. The Department's engagement of an expert should occur no later than one month after the signing of this Settlement Agreement. The expert will work with the Department to develop its internal capacity to report on the Performance Areas identified above, and in the Plan. The Co-Neutrals will meet with the Department and the Expert to ascertain progress towards the development of the Plan, as needed.

(c) The Department shall share drafts of the Plan routinely with the Co-Neutrals, and as requested by the Co-Neutrals. The Plan may incorporate existing planning goals and priorities of the Department.

(d) The Co-Neutrals will hold discussion meetings with the Department and Class Plaintiffs (the "Progress Update Meetings"). These Progress Update Meetings will be an opportunity to apprise Class Plaintiffs of progress on the implementation of the Plan and to discuss and resolve any concerns. It is contemplated that the Progress Update Meetings will occur at least on a quarterly basis and will begin after the acceptance of the Plan by the Co-Neutrals and will continue until the Settlement Agreement Terminates in accordance with Section 2.15; however, the date, time, and length of such meetings, and the number of such meetings, shall be left to the sole discretion of the Co-Neutrals.

(e) The Class Plaintiffs shall have fifteen (15) days to submit comments regarding the proposed Plan to the Co-Neutrals. The Co-Neutrals shall, thereafter, review the Plan and, within 30 days, endorse the Plan or decline to endorse the Plan. The Department may seek funding for the Plan from the Oklahoma State Legislature at any time, including during the review period.

(f) I f the Co-Neutrals endorse the Plan, then the Department shall have 75 days to submit a report to the Co-Neutrals and to the Class Plaintiffs. The report shall identify specific baseline measurements with respect to each of the Performance Areas identified in Section 2.10(a) ("Baselines") and specific target outcomes and/or performance standards ("Target Outcomes"). Any Performance Area contained in the Plan but which is not expressly identified in Section 2.10(a) may be included in the Department's report, but such Performance Area shall not be a mandatory part of the implementation of this Settlement Agreement and cannot form the basis of a violation, although the Co-Neutrals may consider the Department's efforts toward such Performance Area(s) when determining whether the Department has proceeded in good faith (as set forth in Section 2.15). Within 45 days of receipt of the Department's report, the Co-Neutrals shall endorse or reject the Baselines and

the Target Outcomes on an individual basis. The Co-Neutrals may retain at their discretion an expert to help the Co-Neutrals determine the validity of the Department's proposed Baselines and Target Outcomes and ongoing data production. For any Baseline or Target Outcome, the parties shall have 15 days to submit comments, briefing, or argument to the Co-Neutrals. Thereafter, but in no event later than 90 days, the Co-Neutrals shall issue revised Baselines and Target Outcomes, which shall not be subject to further review by any party but may, at the discretion of the Co-Neutrals (after providing the parties an opportunity to comment), be revised by the Co-Neutrals. The Baselines and Target Outcomes shall become an amendment to the Plan.

(g) If the Co-Neutrals reject the Plan, then the Department shall, under the guidance of the Co-Neutrals, and in consultation with the legislative and gubernatorial representatives, have an additional 30 days to modify the Plan, at which time the Plan may be resubmitted to the Co-Neutrals and plaintiffs. If the revised Plan is endorsed, then the Department shall proceed as set forth in Section 2.9(f). If the Plan is rejected a second time, the Co-Neutrals may designate a third party not affiliated with plaintiffs to modify the Plan or create a new plan, or the Co-Neutrals, in their sole discretion, may do so themselves. The Department shall fully cooperate with any third party designated by the Co-Neutrals and with the Co-Neutrals during this process. No later than 75 days after the second rejection, the Co-Neutrals will provide the Plan to all parties, who shall have 15 days to provide comments, briefing, or argument to the Co-Neutrals for the purpose of seeking changes to the Plan. Within 15 days thereafter, the Co-Neutrals shall issue the Plan, which shall not be subject to further amendment by any party. The Department shall then proceed as set forth in Section 2.10(f) and all subsequent deadlines contained in this Agreement shall be extended by 180 days.

(h) If the Department believes that the Plan cannot be implemented without appropriations to the Department in excess of existing funding to the Department by the State of Oklahoma, the Department, pursuant to Section 200 of Title 51 of the Oklahoma Statutes, shall seek to obtain the approval of the Oklahoma Legislature or the Contingency Review Board of any such required appropriations. The Attorney General shall provide advice and guidance to the Contingency Review Board and the Legislature in their review of the Department's request for funds necessary to implement the Plan. Request by the Department to the Legislature or the Contingency Review Board of any additional funding to implement the Plan shall be considered by the Co-Neutrals in determining a finding of good faith efforts in implementing the Plan by the Department pursuant to Section 2.15 of this Agreement. Notwithstanding any such request for appropriations, the Department shall proceed to implement the provisions of the Plan in good faith, subject to the foregoing provisions.

(i) On the date that the Baselines and Target Outcomes are accepted or determined by the Co-Neutrals (the "Acceptance Date"), the Department shall proceed to implement the Plan and shall issue reports to the Co-Neutrals and Class Plaintiffs measuring the Department's progress toward achieving the Target Outcomes. The reports shall be submitted monthly beginning with the third month after the Acceptance Date, shall be issued on or before the 20th day of each month (or the first business day thereafter) for the prior month, and shall measure progress on a monthly basis (e.g., if the Acceptance Date is June 7, then the first report shall be for September and shall be issued by October 20). Although the reports will be issued pursuant to the terms of this Settlement Agreement, the data in the reports shall be incorporated into routine public reporting by the Department and shall continue after the conditions of this Settlement Agreement are met. The Co-Neutrals shall issue a finding

within 60 days of having received the first report stating whether or not the report provides sufficient information to measure accurately the Department's progress toward the Target Outcomes. The Co-Neutrals may revise this finding from time to time as they deem appropriate for subsequent reports. If the Co-Neutrals find that a report does not provide sufficient information to measure accurately the Department's progress, then the Department shall revise the report as required by the Co-Neutrals until the report meets this requirement. Twice annually, the Co-Neutrals shall provide commentary regarding the Department's overall progress as reflected by the reports and shall provide commentary as to whether the Department is making good faith efforts pursuant to Section 2.15 of the Settlement Agreement. The Co-Neutrals may, in their discretion: confirm independently the data and statistics in the reports and/or require additional data as they deem necessary to demonstrate performance pursuant to this Settlement Agreement; and conduct such record reviews, quantitative or qualitative analysis as the Co-Neutrals deem necessary to determine the Department's compliance with this Settlement Agreement. The reports, commentary, and findings described in this paragraph shall not be subject to appeal but may be included in the record on appeal as provided in Section 2.15(b).

2.11 **Co-Neutral Access to Department.** Without limiting any other provision of the Settlement Agreement, the Co-Neutrals, and their designates, shall have free and unfettered access to the Department's staff and documents in order to perform their duties and in order to exercise the powers conferred herein. The Department shall cooperate fully and comply with any request made by the Co-Neutrals.

2.12 **Target Outcome Findings.** On or before October 15, 2014, the Co-Neutrals shall issue written findings to Settling Defendant and Class Counsel identifying for the period through June 30, 2014, in the Co-Neutrals sole discretion: those Target Outcomes that have been met; those Target Outcomes for which the Department has achieved sustained, positive trending toward the Target Outcomes; and those Target Outcomes for which the Department has not achieved sustained, positive trending (collectively, the "Target Outcome Findings"). These findings are not subject to review. A second Target Outcome Findings report shall be issued to Settling Defendant and Class Counsel on or before October 15, 2015, for the period through June 30, 2015. The Target Outcome Findings shall replace one of the Co-Neutrals' twice annual commentaries as referenced in Section 2.10(h).

2.13 **Continued Reporting.** Even if the Department meets one or more Target Outcomes or achieves sustained, positive trending toward one or more Target Outcomes during the term of this Settlement Agreement, the Department will continue to report to the Co-Neutrals on all of the Performance Areas in this Settlement Agreement.

2.14 **Diagnostic and Remedial Activities.** If the Department fails to achieve positive trending or begins to trend negatively in any area, the Co-Neutrals can at any time require the Department to undertake and maintain diagnostic and remedial activities in that performance area.

2.15 **Final Report.** (a) On December 15, 2016, the Co-Neutrals shall issue a final report. The final report, in addition to the information contained in the Target Outcome Findings referenced above, shall include a finding that the Department has, or has not, made good faith efforts to

achieve substantial and sustained progress toward each Target Outcome. If the Co-Neutrals find that the Department has made, for a continuous period of at least two years prior to December 15, 2016, good faith efforts to achieve substantial and sustained progress toward each Target Outcome, then the Department's obligations under this Settlement Agreement shall terminate and the parties shall jointly seek to vacate any Judgment entered by the Court as a result of a finding or decision by the Co-Neutrals. If the Co-Neutrals find that the Department has not made good faith efforts to achieve substantial and sustained progress toward each Target Outcome, the Department shall continue to be subject to the terms of this Settlement Agreement for successive one year periods, with a continuation of the identified reporting requirements. At the end of each such period, the Co-Neutrals shall issue additional Target Outcome Findings until such time as the Co-Neutrals find that the Department has made, for a continuous period of at least two years prior to the report, good faith efforts to achieve substantial and sustained progress toward each Target Outcome.

(b) The parties agree each has a right to appeal to the Court the Final Report of the Co-neutrals issued on December 15, 2016. The parties agree that if Magistrate Judge Wilson is still serving as a magistrate for the United States District Court for the Northern District of Oklahoma, or is still serving as a member of the federal judiciary, he shall hear any appeal of the Final Report so long as doing so does not violate any federal rule or statute. The parties hereby consent to disposition by Magistrate Judge Wilson in accordance with Title 18, Section 636(c)(1) of the United States Code for this purpose. If Magistrate Judge Wilson is unable to hear the appeal, then the appeal shall be to the District Court. A notice of appeal shall be filed within thirty (30) days of the date the Final Report. The standard of review for any such appeal of the Final Report shall be the standard of "arbitrary and capricious." After a notice of appeal is filed, the parties will request a schedule from the court regarding completion of the record and submission of briefs. The record for the appeal shall be limited to this Settlement Agreement, the Child Welfare Plan and any amendments or appendices attached thereto, Co-neutrals' reports (including but not limited to their written commentary and findings) and the documents relied upon by the Co-neutrals to make those reports, and the reports/written responses from the parties to the Co-neutrals and documents relied upon by the parties to make those reports/written responses which were provided to the Co-neutrals for their consideration. This right to appeal is considered a final appeal limited to Magistrate Judge Wilson or, if he is unable to hear the appeal, to the District Court, and the decision of either will be final and unappealable to the District Court, Tenth Circuit or other court of any jurisdiction. It is agreed by the parties that in the event an appeal is filed, but is unsuccessful, the non-appealing party shall be entitled to recover the reasonable attorney fees and costs incurred in defending an unsuccesful appeal.

COURT APPROVAL OF THE SETTLEMENT AND CONTINUING JURISDICTION OF THE COURT

3.1 As soon as practicable after the execution of this Settlement Agreement, Class Representatives and Class Counsel will file a motion seeking: (a) preliminary approval of this Settlement Agreement; and (b) authority for the Department to provide notice of the proposed settlement to the Plaintiff Class. Class Counsel will also file a motion for Class Counsel Fees and Expenses.

3.2 After notice of: (a) the proposed settlement; and (b) Class Counsels' request for Class Counsel Fees and Expenses, the Court shall be requested to enter Judgment, substantially in the form attached hereto as Exhibit C, approving the settlement between Settling Defendant and the Plaintiff Class, and specifically approving the terms of this Settlement Agreement. The Judgment shall:

a. Approve the settlement between Settling Defendant and the Settlement Class embodied in this Settlement Agreement, without modification of its terms in any respect, unless all Parties agree to such modifications, as fair, reasonable and adequate to the Plaintiff Class within the meaning of Federal Rule of Civil Procedure 23;

b. Dismiss with prejudice the Class Action Litigation;

c. Adjudge that each Settlement Class Member shall be deemed conclusively to have released the Released Claims against the Released Parties;

d. Bar and permanently enjoin all Settlement Class Members from prosecuting, commencing or continuing any of the Released Claims against the Released Parties;

e. Include a finding that the settlement between Settling Defendant and the Settlement Class is fair, reasonable and was entered into between Settling Defendant and the Settlement Class in good faith and without collusion;

f. Include a finding that, by agreeing to settle the Class Action Litigation, Settling Defendant does not admit, and specifically denies, any and all liability to the Plaintiff Class, the Class Representatives and Class Counsel; and

g. Incorporate the Settlement Agreement and provide that the Court retains jurisdiction as set forth herein.

FAILURE TO OBTAIN APPROVAL OF SETTLEMENT

4.1 If the Court does not enter an order preliminarily approving this settlement, without modification of its terms in any respect, unless all parties agree to such modifications, or does not enter a Judgment approving the settlement (including, without limitation, the provisions of Paragraph 3.2 above) between Settling Defendant and the Settlement Class after appropriate notice of the Settlement Fairness Hearing, in conformity herewith, or if the Court enters Judgment approving the settlement between Settling Defendant and the Settlement Class and appellate review of said Judgment is sought and upon such review such Judgment is reversed, in whole or in part, then this Settlement Agreement between Settling Defendant and the Settlement Class shall immediately become null and void ab initio. It is specifically agreed that any failure of the Court to approve the Motion for Class Counsel Fees and Expenses in the amounts sought by Class Counsel shall not affect the validity of this Settlement Agreement.

MISCELLANEOUS

5.1 Settling Defendant contends that all claims and allegations, individually and collectively, of the Class Representatives and the Plaintiff Class in the Class Action Litigation are without merit. Settling Defendant expressly denies all allegations of wrongdoing or liability with respect to the claims and allegations. It is expressly agreed that neither this Settlement Agreement nor any document referred to herein, nor any action taken to carry out this Settlement Agreement is, may be construed as, or may be used as an admission by Settling Defendant of any fault, wrongdoing or liability whatsoever with respect to the claims and allegations in the Class Action Litigation. By agreeing to settle the claims of the Plaintiff Class in the Class Action Litigation, Settling Defendant does not admit that the Class Action Litigation is properly maintained as a class action and the Plaintiff Class does not admit any deficiency in the merits of its claims.

5.2 The Class Representatives, the Settlement Class and Settling Defendant agree to settle the claims of the Plaintiff Class asserted against Settling Defendant in the Class Action Litigation and to execute this Settlement Agreement solely to compromise and settle protracted, complicated and expensive litigation. Neither the entering into or carrying out of the Settlement Agreement, nor any negotiations or proceedings related thereto shall be construed as, or deemed to be evidence of, an admission or concession by any of the parties to this Settlement Agreement.

5.3 The Notice of Settlement shall require that any objection to the settlement between Settling Defendant and the Plaintiff Class be in writing and be filed with the Office of the Court Clerk of the Northern District of Oklahoma and served on all parties at least ten (10) days prior to the Settlement Fairness Hearing.

5.4 Each of the parties to this Settlement Agreement shall use its best efforts to cause the settlement between Settling Defendant and the Settlement Class to be approved and consummated.

5.5 This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the parties hereto related to the Class Action Litigation and no representations, warranties or inducements have been made to any party concerning this settlement other than the representations, warranties and covenants contained and memorialized in this Settlement Agreement.

5.6 This Settlement Agreement may be executed in one or more counterparts, including by facsimile and/or imaged signatures. All executed counterparts taken together shall be deemed to be one and the same instrument. Counsel for the parties to this settlement shall exchange among themselves original signed counterparts and a complete set of original executed counterparts shall be filed with the Court.

5.7 The parties and their counsel have mutually contributed to the preparation of this Settlement Agreement. Accordingly, no provision of the Settlement Agreement shall be construed against any party on the grounds that one of the parties or its counsel drafted the provision.

5.8 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

5.9 The undersigned each represents that he or she is fully authorized to execute this Settlement Agreement on behalf of the settling party for which he or she signs.

5.10 The parties understand that approval of the Contingency Review Board is a condition precedent for enforcement and consummation of this Agreement. Settling Defendant shall present this Settlement Agreement to the Contingency Review Board for approval expeditiously and, in no event, later than December 30, 2011. The obligations of the Plaintiff Class under this Agreement are subject to the conditions precedent that (i) the Oklahoma Commission for Human Services and the Contingency Review Board shall have approved this Agreement on or before December 30, 2011 and (ii) The Governor of the State of Oklahoma shall designate the Co-Neutrals as parties entitled to access as contemplated by Title 10A, Section 1-6-103(A)(9) of the Oklahoma Statutes, which conditions the Plaintiff Class may waive in its sole discretion.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement in several counterpart originals on the date set forth opposite their names.

SIGNATURE PAGE

Wherefore, the parties hereto signify their agreement to this Settlement Agreement and to all the terms herein by signing where indicated below.

FOR AND ON BEHALF OF THE SETTLING DEFENDANT:

OKLAHOMA COMMISSION OF HUMAN SERVICES

By _____

Its BRAD YARBROUGH, HSC CHAIRMAN
(Authorized Signatory)

Dated 1-4-2012

Approved by Settlement Counsel:

Elizabeth Barnett

Dated 1/4/2012

D. KENT MEYERS Elizabeth Barnett
1800 Mid-America Tower
20 North Broadway
Oklahoma City, OK 73102-8273

FOR AND ON BEHALF OF THE PLAINTIFF CLASS:

_____

Dated 2012-01-04

FREDERIC DORWART
FREDERIC DORWART, LAWYERS
Old City Hall
124 East Fourth Street
Tulsa, OK 74103

Marcia Robinson Lowry
by Frederic Dorwart

Dated 2012-01-04

MARCIA ROBINSON LOWRY
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330 Seventh Avenue, Fourth Floor
New York, New York 10001