



**The Barton Child Law & Policy Clinic**

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October 3, 2005

The Honorable Marvin Shoob  
c/o Clerk, United States District Court for the Northern District of Georgia  
United States District Court for the Northern District of Georgia  
Richard B. Russell United States Courthouse  
75 Spring Street  
Atlanta, Georgia 30303

Re: KENNY A., et. al. v. Perdue, et. al.  
Civil Action No. 1:02-CV-1686-MHS

Additional Comments to Proposed Settlement Consent Decree

Dear Judge Shoob,

Thank you for accepting our additional comments and responses to oral arguments made before the Court on September 21, 2005 relative to Class Counsel's and State Defendants' Joint Motion for Final Approval of the Settlement Agreement and Consent Decree in the above styled matter.

The BARTON CHILD LAW AND POLICY CLINIC at Emory University School of Law (hereinafter BARTON CLINIC) through KAREN WORTHINGTON, in her capacity as Director of the BARTON CLINIC, and

by and through ANDREW BARCLAY, in his capacity as Data Analyst for the BARTON CLINIC respectfully submits the following additional comments to the Proposed Settlement for the above styled class action litigation (hereinafter Proposed Settlement).

The BARTON CLINIC filed written objections and comments on September 1, 2005, and Karen Worthington and Andrew Barclay addressed the Court orally on September 21, 2005, in compliance with the Court's written instructions of its order of July 5, 2005 granting Notice of Proposed Settlement.

The BARTON CLINIC now writes to clarify for the Court that county data related to the repeat maltreatment of children who are reported to the Division of Family and Children Services (hereinafter DFCS) but are not in state custody is *collected but is not publicly available*. During the oral arguments, Plaintiffs' Counsel suggested that data related to additional safety measures requested by the BARTON CLINIC are easily available to the Accountability Agents, the Court, and the public. It is precisely because these numbers are *not* reported out by DFCS that the BARTON CLINIC has requested that the Court specifically ask that they be included in the Accountability Agents' reports.

1. **Recurrence of Maltreatment in Substantiated Cases:** Recurrence of Maltreatment is one of the key safety measures used by the Federal Administration for Children and Families in the Child and Family Services Reviews. A target for this measure should be set and included in the Proposed Settlement. The national standard is less than or equal to 6.1% of children re-abused within 6 months. Contrary to Plaintiffs' Counsel's testimony in court on September 21, information on recurrence

of maltreatment among class members is not available to the public. The only way for the Court to ensure that this information is available and that class members are not at greater risk of re-abuse than they were when the suit was filed is to request that targets be set and this information be included in the Accountability Agents' reports. The Proposed settlement does require the Accountability Agents to receive some information related to recurrence of maltreatment, but no target is set, there is no requirement that the information be included in the public reports, and the data provided to the Accountability Agents are insufficient to calculate recurrence as defined by the Federal Review (Proposed Settlement, paragraph G, page 45).

**2. Maltreatment Following an Unsubstantiated or Diverted Report:**

Information on maltreatment following an unsubstantiated or diverted report is not available to the public and is not reported annually to the federal government. The only way for the Court to ensure that this information is available and that children are better protected is to request that targets be set and this information be included in the Accountability Agents' reports. The Proposed settlement does require the Accountability Agents to receive information on children who are handled through the diversion program, but no target is set, these data will not include all children in unsubstantiated cases, and there is no requirement that the information be included in the public reports. (Proposed Settlement, paragraph G, page 45).

The BARTON CLINIC feels compelled to clarify that control of data related to child safety belongs to the Defendants in this case, and without that data, children could be experiencing greater harm even while the state is in full compliance with the settlement, and the Court, Accountability Agents,

Plaintiffs' counsel and the public would not know. Child welfare systems must appropriately balance permanence, safety, and child well being. Whenever greater attention is paid to one of these three areas, extra caution must be taken to ensure that standards and success rates do not decline in the other two areas. Both Plaintiffs' and Defendants' counsel acknowledge that they expect the most important safety measure in the settlement agreement, the re-entry rate, to worsen from current and historic levels, and they argue that the Court should not even monitor other safety measures. This is an unacceptable compromise, when other Georgia counties have struck the balance between safety and permanence at levels superior to those in the proposed settlement. To ensure that safety is not sacrificed for the sake of permanence, targets for safety measures must be included in the settlement, and safety measures must be reported publicly.

In conclusion, we thank you for this opportunity to clarify these issues raised in the September 21 Fairness Hearing on the Proposed Settlement.

Sincerely,

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