

D.S. v. DCYF Q&A for Child Welfare Advocacy Stakeholders

October 2021

Disability Rights Washington (DRW) and three named plaintiffs are currently litigating a class action lawsuit against the Department of Children, Youth, and Families (DCYF). DRW is a party and is co-counseling with National Center for Youth Law (NCYL), Children's Rights, and two law firms, Carney Gillespie, and Munger Tolles & Olson, to represent the Plaintiffs.

Below are some common questions and answers that Plaintiffs are able to share.

Q: Why did Plaintiffs bring this lawsuit?

A: Plaintiffs allege that DCYF is violating the rights of children with disabilities in foster care under the United States Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Adoption Assistance and Child Welfare Act. Through this lawsuit, Plaintiffs are calling on DCYF to correct its systemic failures to provide for the supports and services children need, including family reunification-focused services and supports, individualized case plans, and services in the most integrated setting appropriate to their needs. The [complaint](#) alleges that these failures are resulting in harmful practices that must end, including the reliance on hotels and offices, night-to-night placements, and out-of-state facilities.

Q: Are all children in foster care a part of this class action lawsuit?

A: No. This case was originally brought on behalf of foster children with behavioral health and developmental disabilities. On September 22, 2021, Federal Judge Barbara Rothstein of the U.S. District Court in the Western District of Washington signed a [stipulated order](#) certifying a class which includes children and youth in foster care who have experienced five or more placements (excluding temporary stays such as respite, camps, overnights with parents, etc.), have been referred to or are in an out-of-state facility, have experienced a hotel or office stay in the past six months, and/or are on the Children's Long-Term Inpatient Program (CLIP) waitlist. Having a certified class means that any remedy resulting from the lawsuit will apply to all of the children and young people in the class.

Q: What is the current status of the case?

Plaintiffs and DCYF are in settlement negotiations, which are confidential. They are also going through the process of 'discovery', where each side collects the evidence they need to argue their side. If a full agreement resolving the case is not reached, a trial is scheduled to begin in June 2022.

Q: Did Plaintiffs ask the Department to end exceptional placements in hotels and offices by a specific date?

A: No. Plaintiffs filed a [motion](#) asking the Court to order DCYF to immediately stop its harmful practices for children in exceptional placements (including its practice of having children spend the night in cars and offices) while this lawsuit progresses towards trial. Although the Court entered an [order](#) requiring the Department to draft a plan for ending exceptional placements by November 1, 2021, Plaintiffs' motion did not ask the court to order exceptional placements to end by a date certain. Plaintiffs want young people in foster care to get the right kinds of supports so that exceptional placements, as well as

night-to-night and out-of-state placements, are not necessary. Plaintiffs also believe that building better alternatives may take time and oppose forcing children into long-term placements where they do not feel safe and cared for.

At the hearing on Plaintiffs' motion, the Court agreed that preliminary court intervention was appropriate to make sure children in exceptional placements are safe, and it [ordered](#) the parties to submit an agreed remedy. The Court entered the parties' jointly proposed order, which includes the provision for a plan to end exceptional placements, as well as prohibitions against using cars and offices for overnight placements and requirements to support the health and safety of children in exceptional placements. For more information about what the court's preliminary order requires, please see [Exceptional Placements in Hotels FAQ](#).

Q: Are Plaintiffs continuing to advocate for additional system transformations that go beyond what the Department put in its [Exceptional Placement Plan](#)?

A: Yes. The Department provided Plaintiffs' counsel with a draft of its Exceptional Placement Plan, and Plaintiffs' counsel provided comments and suggestions. Plaintiffs' counsel did not see the final plan until September 1, 2021. Plaintiffs' Counsel do not oppose the plan and support many parts of it, including the part about creating an "Emerging Adulthood Transitional Living Program." However, Plaintiffs believe that far more is necessary to ensure that they and the class are treated fairly under the law. Plaintiffs are currently negotiating with Defendants about what additional changes are necessary to fully resolve the lawsuit.

Q: Is this lawsuit asking for rate increases for facility-based Behavioral Rehabilitation Services?

A: No. Plaintiffs alleged that the Department should be investing in less restrictive and more integrated options, with more attention to giving families what they need in order to reunify. Increasing funding for group care facilities will not resolve the claims in this case.