

Transforming Child Welfare in Washington State: Performance-Based Contracting

Appendix

**Marna Miller
Stephanie Lee**

January 2012

Washington State Institute for Public Policy
110 Fifth Avenue Southeast, Suite 214 • PO Box 40999 • Olympia, WA 98504-0999
(360) 586-2677 • FAX (360) 586-2793 • www.wsipp.wa.gov

Contents

Section A: Child Welfare Transformation Design Committee Membership	A-1
Section B: List of assignments in legislation.....	A-2
Section C: Description of transition plan (2SHB 2106, Section 8)	A-3
Section D: Final Report of the Outcomes and Evaluation Advisory Committee, April 9, 2010.....	A-5
Section E: Committee Meetings and Decisions.....	A-8
Section F: Complete List of Transformation Design Committee Meetings	A-10
Section G: Court Injunction	A-11

Appendix: Section A

Child Welfare Transformation Design Committee Membership

The legislation, 2SHB 2106,¹ prescribed the make- up of the committee to include:

- The Governor or the Governor's designee;
- The Attorney General or Attorney General's designee;
- The Assistant Secretary of the Children's Administration in DSHS;
- Two Regional Administrators in Children's Administration in DSHS;
- The Administrator for the Division of Licensed Resources in Children's Administration in DSHS;
- The Office of the Family and Children's Ombudsman;
- Four representatives from the Indian Policy Advisory Committee convened by DSHS;
- The Racial Disproportionality Advisory Committee convened by the DSHS;
- The bargaining representative for the largest number of Children's Administration's employees;
- Two nationally recognized experts in performance-based contracting;
- Four private agencies providing child welfare service in Washington (to be chosen by the legislature);
- A parent with experience in the dependency process (chosen by the legislature);
- Partners for Our Children (POC), a research group associated with the University of Washington;
- Two superior court judges; and
- A foster parent (chosen by the legislature)

SSB 6832 amended the committee membership to include a former foster youth.²

Names of current committee members is available at: <http://www.joinhandsforchildren.org/committee>.

¹ 2SHB 2106, Chapter 520, § 3 (1), Laws of 2009.

²SSB 6832, Chapter 291, Laws of 2010

**Appendix: Section B
List of assignments in legislation**

Assignment prior to Jan 2012	Responsible party	Due date	Status
Committee members identified		June 15, 2009	Complete
First Committee meeting		June 30, 2009	Complete
Quarterly report to legislature	Committee	Sept 30, 2009	Complete
Quarterly report to legislature	Committee	Dec 30, 2009	Complete
Quarterly report to legislature	Committee	Mar 30, 2010	Complete
Section of the transition plan (from Section (3)(6) of SSB 6832): <i>A recommendation as to how to implement this act so that full implementation of this act is achieved no later than December 30, 2012</i>	Committee	June 1, 2010	Not yet complete
Quarterly report to legislature	Committee	June 30, 2010	Complete
Quarterly report to legislature	Committee	Sept 30, 2010	Complete
Reinvestment plan	DSHS, OFM, and the CFC	Nov 20, 2010	Complete (Feb 2011)
Quarterly report to legislature	Committee	Dec 30, 2010	
Quarterly report to legislature	Committee	Mar 30, 2011	No meetings during this period
Quarterly report to legislature	Committee	June 30, 2011	Complete
Convert and consolidate contracts to performance-based contracts	DSHS Children's Administration	July 1, 2011	Work has commenced; final product still in development
Quarterly report to legislature	Committee	Sept 30, 2011	Complete
Initial report on conversion to performance-based contracts	WSIPP	Oct 1, 2011	Complete
Determine two sites for demonstration project	Committee and DSHS Children's Administration	Not defined in legislation	Complete (Nov 2011)
Quarterly report to legislature	Committee	Dec 30, 2011	Complete
Determine key demonstration factors, including: performance outcomes, methods to measure outcomes, and population size	Committee	Not defined in legislation	Completed by Outcomes and Evaluation and Site Selection and Transition Issues advisory committees.

Assignment after Jan 2012	Responsible party	Due date	Status
Quarterly report to legislature	Committee	Mar 30, 2012	
Quarterly report to legislature	Committee	June 30, 2012	
Final report on conversion to performance-based contracts	WSIPP	June 30, 2012	
Establish a transition plan (detailed in Appendix A)	Committee	Not defined in legislation	
Demonstration sites fully implemented	DSHS Children's Administration	Dec 30, 2012	
Report on measurable effects of demonstration sites	WSIPP	April 1, 2015	

Appendix: Section C
Description of transition plan
(2SHB 2106, Section 8)

- (2) The committee shall establish a transition plan containing recommendations to the legislature and the governor consistent with this section for the provision of child welfare services by supervising agencies pursuant to section 3 of this act.
- (3) The plan shall include the following:
 - (a) A model or framework for performance-based contracts to be used by the department that clearly defines:
 - (i) The target population;
 - (ii) The referral and exit criteria for the services;
 - (iii) The child welfare services including the use of evidence-based services and practices to be provided by contractors;
 - (iv) The roles and responsibilities of public and private agency workers in key case decisions;
 - (v) Contract performance and outcomes, including those related to eliminating racial disparities in child outcomes;
 - (vi) That supervising agencies will provide culturally competent service;
 - (vii) How to measure whether each contractor has met the goals listed in section 3(5) of this act; and
 - (viii) Incentives to meet performance outcomes;
 - (b) A method by which the department will substantially reduce its current number of contracts for child welfare services;
 - (c) A method or methods by which clients will access community-based services, how private supervising agencies will engage other services or form local service networks, develop subcontracts, and share information and supervision of children;
 - (d) Methods to address the effects of racial disproportionality, as identified in the 2008 Racial Disproportionality Advisory Committee Report published by the Washington state institute for public policy in June 2008;
 - (e) Methods for inclusion of the principles and requirements of the centennial accord executed in November 2001, executed between the state of Washington and federally recognized tribes in Washington state;
 - (f) Methods for assuring performance-based contracts adhere to the letter and intent of the federal Indian child welfare act;
 - (g) Contract monitoring and evaluation procedures that will ensure that children and families are receiving timely and quality services and that contract terms are being implemented;
 - (h) A method or methods by which to ensure that the children's administration has sufficiently trained and experienced staff to monitor and manage performance-based contracts;
 - (i) A process by which to expand the capacity of supervising and other private agencies to meet the service needs of children and families in a performance-based contractual arrangement;
 - (j) A method or methods by which supervising and other private agencies can expand services in underserved areas of the state;

- (k) The appropriate amounts and procedures for the reimbursement of supervising agencies given the proposed services restructuring;
- (l) A method by which to access and enhance existing data systems to include contract performance information;
- (m) A financing arrangement for the contracts that examines:
 - (i) The use of case rates or performance-based fee-for-service contracts that include incentive payments or payment schedules that link reimbursement to outcomes; and
 - (ii) Ways to reduce a contractor's financial risk that could jeopardize the solvency of the contractor, including consideration of the use of a risk-reward corridor that limits risk of loss and potential profits or the establishment of a statewide risk pool;
- (n) A description of how the transition will impact the state's ability to obtain federal funding and examine options to further maximize federal funding opportunities and increased flexibility;
- (o) A review of whether current administrative staffing levels in the regions should be continued when the majority of child welfare services are being provided by supervising agencies;
- (p) A description of the costs of the transition, the initial start-up costs and the mechanisms to periodically assess the overall adequacy of funds and the fiscal impact of the changes, and the feasibility of the plan and the impact of the plan on department employees during the transition; and
- (q) Identification of any statutory and regulatory revisions necessary to accomplish the transition.

Appendix: Section D
Final Report of the Outcomes and Evaluation Advisory Committee, April 9, 2010

Join Hands for Children
Outcome Advisory Committee Recommendations for
Domains and Indicators used to Measure Outcomes

This document provides an initial list of potential measures to be used to gauge the performance of public and private agencies providing services to Washington children and families in the context of the implementation of SSHB 2106. It provides measures in the domains of child safety, permanency and stability, and well-being. Certain principles were used in developing these measures. The measures reflect an appreciation of the fact that children's experience of the child welfare system is dynamic; children enter care, move from placement to placement within care, exit, and there is wide variation in the timing of these events. This dynamism calls for measures that allow us to follow children from the beginning of their encounter with the child welfare system while also acknowledging that some important outcomes often take many months or years to occur. In some cases the measures take into account statutory criteria, for example, the 15-month standard for expediting permanency found in the Adoption and Safe Families Act.

The measures listed here are defined in terms of broad child populations, but all of them should be broken down by child age, race/ethnicity, and tribal affiliation. Tracking outcomes by race, ethnicity, and tribal affiliation is an essential aspect of efforts to address disproportionate involvement in the child welfare system of subpopulations defined by these characteristics. Identifying where disparities occur can help identify targets for policy, program, and practice interventions directed towards reducing disparities. Outcomes can then be monitored to see if those interventions are effective in reducing disparities. Moreover, performance contracts should, to the extent feasible, explicitly address reducing disparities in the outcomes agreed upon for the child welfare system as a whole. Outcome measures should be broken down by distinct age groups because the developmental needs of children differ by age and some outcomes (e.g., percentage of children who run away; employment experience) are only relevant to some age groups.

All the Safety, Permanency and Stability, and Well-Being measures listed below are to be measured at 3, 6, 12, 24, and 36 month periods to assist in identifying variation at each period throughout the process.

Racial Disproportionality - We recommend that each and every measure listed below be broken down by age, gender, race/ethnicity and tribal affiliation to better understand how Washington State is doing in relation to racial disproportionality.

Safety Outcome: Children involved with child welfare services in Washington will be protected from abuse and neglect.

Measures/Indicators

- Of all children who are subjects of an investigation of child maltreatment who do not receive in-home services or enter out-of-home care, what percentage is the subject of another maltreatment investigation within a specified period of time?
- Of all children who are subjects of an investigation of child maltreatment who do receive in-home services or out-of-home care, what percentage is the subject of another maltreatment investigation within a specified period of time?
- Of all children who receive in-home services, what percentage enters out-of-home care within a specified period of time?

- For all children who receive in-home services or out-of-home care during the reporting period, what is the number of founded and unfounded child abuse reports, by type of perpetrator (out-of-home care provider; parent or other relative not providing care; other adults in the home), per care year (i.e., total number of reports/total number of years in care experienced by all children in care during the reporting period)?
- Of all children experiencing an exit from out-of-home care to permanency, what percentage is the subject of a later founded child maltreatment report within a specified period of time, by permanency type? Permanent exits include reunification with parent(s), discharge to a relative, legal guardianship, and adoption.

Permanency and Stability Outcome: Children in Washington’s child welfare system will experience permanency and stability in their living situations.

Measures/Indicators

- Of all children entering out-of-home care, what percentage experiences an exit to “safe” permanency within a specified period of time, by permanency type? Exits to permanency include reunification with parent(s), discharge to a relative, legal guardianship, and adoption.
- Of all children in out-of-home care for at least 15 months, what percentage experiences an exit to “safe” permanency within a specified period of time by exit type?
- Of all children entering out-of-home care, what percentage experiences an exit that does not lead to “safe” permanency within a specified period of time, by non-permanent exit type? Exits not leading to permanency include running away from care and not returning, emancipation and aging out of care, incarceration leading to exit, hospitalization leading to exit, and death Of all children in out-of-home care for at least 15 months, what percentage experiences an exit that does not lead to “safe” permanency within a specified period of time, by exit type?
- Of all children experiencing an exit from out-of-home care to “safe” permanency, what percentage reenters out-of-home care within a specified period of time (e.g., 3, 6, 12, 24 months), by permanency type?
- Of all children in out-of-home care for whom parental rights have been terminated, what percentage experience a finalized adoption within a specified period of time after termination of parental rights (e.g., 3, 6, 12, 24 months)?
- What percentage of children entering out-of-home care experiences two or more placements within six months of entering care, by nature of the moves (e.g., moves from nonkin care to kinship care; from family-based care to group care, etc.)?
- For children out-of-home care over six months, what is the average number of placement moves per care year, by nature of the moves?
- For what percentage of children in out-of-home care who are members of federally-recognized tribes are all the requirements of the Indian Child Welfare Act and tribal-state agreements being met?

Well-Being Outcome: Children in Washington’s child welfare system will receive care that meets their physical health, mental health, educational, social/emotional, and cultural needs.

Measures/Indicators

- What percentage of children entering out-of-home care is *initially* placed with a relative, kin, or suitable person as defined by law??
- What percentage of children entering out-of-home care is *initially* placed in family foster care?
- What percentage of children in out-of-home care is currently placed in a family setting (i.e., with a relative, kin/suitable person as defined by law, or in family foster care), by time spent in care?
- Of all children in out-of-home care with at least one sibling in care, what percentage is living with 1) none of their siblings in care, 2) some but not all of their siblings in care; or 3) all of their siblings in care?
- Of children in out-of-home care not living with their siblings, what percent have regular visits?
- For youth 12 years and older in out-of-home care, what is the number of 1) psychiatric hospitalizations; 2) episodes of incarceration, 3) episodes of running away from care, and 4) episodes of self harm?
- For what percentage of children entering out-of-home care are required family, health, developmental, and educational assessments completed on a timely basis?
- For outcomes monitored through the National Youth in Transition Database (financial self-sufficiency, experience with homelessness, educational attainment, positive connections with adults, high-risk behavior, and access to health insurance) for youth in out-of-home care at age 17, what are outcomes achieved at ages 17, 19, and 21?
- Of children in out-of-home care that are not placed with relatives, what percentage are placed in family foster care homes that reflect the ethnic and racial diversity of the communities from which the children were removed?
- What percentage of children in out-of-home care is being identified as tribal members of federally-recognized tribes?
- For what percentage of children in out-of-home care who are identified as tribal members of federally-recognized tribes are all the requirements of the Indian Child Welfare Act and tribal-state agreements being met?

In the area of child well-being in particular, the subcommittee considers the outcome measures/indicators we have proposed to be a work in progress. We believe strongly that well-being should be measured more comprehensively than we have proposed, but we also recognize the obstacles to doing so in the near future. For example, it will be very hard to build these measures into performance-based contracts. Moreover, obtaining data on many potential outcomes of interest will be most efficiently accomplished, and in some cases will only be possible, with much better information sharing between the Children’s Administration and other government and private entities (e.g., schools, health care providers, guardians of vital statistics data). We recommend that part of the 2SHB 2106 implementation process involve bringing together leaders of the institutions that should be involved in this data sharing process to identify and address obstacles to efficient data sharing and whether any legislation is necessary to facilitate data sharing.

Appendix: Section E Committee Meetings and Decisions

June 2009:

- Committee voted to elect Judge Leonard Costello to the second co-chair seat of the committee (the first was legislatively mandated to be occupied by the Assistant Secretary for Children's Administration).

August 2009:

- Committee voted to adopt four Advisory Committees with associated duties (see next section for details).

September 2009:

- No formal votes, committee discussed timelines for Phase 1 and Phase 2 of the project, and their initial report to the Children's Legislative Oversight Committee.

December 2009:

- Committee voted down a motion to recommend adding positions on the Committee for a representative from the Office of Public Defense, a state social worker, a youth, a private social worker, and a Court-Appointed Special Advocate.
- Committee then voted to recommend to the legislature adding a position on the Committee to be filled by a foster youth representative.
- Committee voted down a motion to recommend suspending the implementation dates for the demonstration sites indefinitely.
- Committee voted to recommend to the legislature extending the deadline for converting to performance-based contracts to July 1, 2011, allowing a six-month phase-in period.

March 2010:

- Committee voted to accept the Domains and Indicators used to Measure Outcomes document from the Advisory Committee on Outcomes and Evaluation Issues as a draft, and agreed that the Advisory Committee would return to work further on tribal notification and educational outcomes.
- Committee voted to accept the Principles and Values Used to Determine Core Services, the Preliminary Service Array and associated Definitions documents from the Advisory Committee on Legal and Practice Issues, pending some modifications to the language.
- Committee voted to accept the preliminary criteria for site selection from the Advisory Committee on Site Selection and Transition Issues as a draft, and agreed that the Advisory Committee would meet to consider adding two more criteria proposed by the full Committee.

June 2010:

- Children's Administration informed the Committee that Partners for our Children would conduct an assessment of gaps, needs, and strengths within the state's child welfare service system over the next several months. In addition, CA notified the Committee that a national financial consultant had been hired to aid in finalizing the payment model.
- Committee adopted the Domains and Indicators Used to Determine Outcomes document produced by the Advisory Committee on Outcomes and Evaluation Issues. The co-chairs of that advisory committee announced their work was complete.
- Committee voted to adopt changes to the Principles and Values Used to Determine Core Services, the Preliminary Service Array and associated Definitions documents from the Advisory Committee on Legal and Practice Issues.

- Committee voted to adopt definitions for Evidence-Based and Promising Practices from the California Child Welfare Clearinghouse.

September 2010:

- No formal votes, committee discussed the progress of Advisory Committees and the Children's Administration provided updates on their work toward solidifying a plan for Lead Agency contracts, along with progress toward identifying a payment model for the performance-based contracts.

October 2010:

- No formal votes, but the Committee was asked for their thoughts on the transition to Phase 2 (e.g., phasing in Supervising Agencies who would have case management responsibilities). Children's Administration presented three options for who would perform these Supervising Agency duties:
 1. Open up the bidding to all interested parties
 2. Restrict the bidding to Lead Agency contractors from Phase 1

The issue was discussed, along with the potential implications for the Phase 1 RFP: if the second option was selected, there would need to be language in the RFP describing that anyone interested in becoming a Supervising Agency in Phase 2 would also have to bid to be a Lead Agency contractor in Phase 1. The Committee also discussed the potential for delaying the implementation of Phase 2, but a vote of the committee on all these issues was delayed until the next meeting (November, 2010)³.

December 2010:

- No formal votes; the focus of this meeting was a question-and-answer session with Children's Administration regarding the draft RFP released in November.

April 2011:

- No formal votes; the Committee was provided with timeline, budget, and tribal updates, as well as an update on legislation in process that could affect Children's Administration.

June 2011:

A meeting was scheduled for June 15, 2011, but this was cancelled due to the temporary injunction that prevented Children's Administration from moving ahead with reviewing Requests for Proposals.

October 2011:

No formal votes. The Children's Administration and WFSE gave a joint presentation on progress made in developing a plan for performance-based contracting. The two groups are meeting frequently and planned to have a proposal ready by October 31 for presentation to Secretary Dreyfus. The Committee on Site Selection and Transition Issues presented possible sites for the Phase 2 demonstration. The law indicates one site should be located in Western Washington and another in Eastern Washington. The committee

November 2011:

- The committee voted on locations for the two demonstration sites for Phase 2. The Western Washington site will include the DCFS offices in Everett, Lynnwood, Sky Valley, Smokey Point and two offices in Seattle, King West and Martin Luther King Jr. The Eastern Washington site will include offices in Clarkston, Colfax, Moses Lake, and Spokane (which also serves Lincoln County).
- The committee voted to have the Advisory Committee on Site Selection and Transition Issues invite three tribes in Eastern Washington (Colville, Spokane, and Kalispel) to take part in the demonstration. It was suggested that including tribal lands in the demonstration site might provide information on the effectiveness of private child welfare case management for American Indian families. All three tribes declined to take part in the demonstration.

³ The November 2010 Committee meeting was cancelled; the issues described here never came to a vote.

Appendix: Section F
Complete List of Transformation Design Committee Meetings

Date	Meeting
Jun 30, 2009	Full Committee
Aug 4, 2009	Full Committee
Sep 16-17, 2009	Full Committee
Oct 5, 2009	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Oct 6, 2009	Advisory Committee on Outcomes and Evaluation Issues
Oct 14, 2009	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Oct 27, 2009	Advisory Committee on Outcomes and Evaluation Issues
Oct 29, 2009	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Nov 12, 2009	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Nov 17, 2009	Advisory Committee on Outcomes and Evaluation Issues
Nov 18, 2009	Advisory Committee on Financial Issues
Nov 18, 2009	Advisory Committee on Legal and Practice Issues
Dec 10, 2009	Advisory Committee on Outcomes and Evaluation Issues
Dec 10, 2009	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Dec 14-15, 2009	Full Committee
Dec 17, 2009	Advisory Committee on Financial Issues
Jan 4, 2010	Advisory Committee on Legal and Practice Issues
Jan 5, 2010	Advisory Committee on Outcomes and Evaluation Issues
Jan 7, 2010	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Jan 21, 2010	Advisory Committee on Financial Issues
Feb 2, 2010	Advisory Committee on Legal and Practice Issues
Feb 2, 2010	Advisory Committee on Outcomes and Evaluation Issues
Feb 11, 2010	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Feb 26, 2010	Advisory Committee on Financial Issues
Mar 1, 2010	Advisory Committee on Legal and Practice Issues
Mar 2, 2010	Advisory Committee on Outcomes and Evaluation Issues
Mar 18, 2010	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Mar 22-23, 2010	Full Committee
Mar 26, 2010	Advisory Committee on Financial Issues
Apr 12, 2010	Advisory Committee on Legal and Practice Issues
Apr 13, 2010	Advisory Committee on Outcomes and Evaluation Issues
Apr 15, 2010	Advisory Committee on Selection of Demonstration Sites and Transition Issues
May 3, 2010	Advisory Committee on Legal and Practice Issues
May 13, 2010	Advisory Committee on Selection of Demonstration Sites and Transition Issues
May 26, 2010	Advisory Committee on Financial Issues
Jun 7, 2010	Advisory Committee on Legal and Practice Issues
Jun 14-15, 2010	Full Committee
Jul 15, 2010	Advisory Committee on Financial Issues
Aug 9, 2010	Advisory Committee on Legal and Practice Issues
Aug 19, 2010	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Aug 23, 2010	Advisory Committee on Financial Issues
Sep 8, 2010	Advisory Committee on Legal and Practice Issues
Sep 20, 2010	Full Committee
Sep 28, 2010	Advisory Committee on Financial Issues
Oct 22, 2010	Full Committee
Dec 14, 2010	Full Committee
Apr 20, 2011	Full Committee
Jun 15, 2011	Full Committee -- Cancelled
Aug 2, 2011	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Sep 27, 2011	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Oct 7, 2011	Full Committee
Oct 18, 2011	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Oct 28, 2011	Advisory Committee on Financial Issues
Oct 31, 2011	Advisory Committee on Selection of Demonstration Sites and Transition Issues
Nov 8, 2011	Full Committee
Dec 8, 2011	Advisory Committee on Selection of Demonstration Sites and Transition Issues

Appendix: Section G
Court Injunction

EXPEDITE
 No Hearing is set
 Hearing is set:
Date: 5/20/2011
Time: 9:00 a.m.
Judge/Calendar: Judge Thomas McPhee/Civil

FILED
SUPERIOR COURT
THURSTON COUNTY, WA
2011 MAY 20 AM 11:53
BETTY J. GOULD, CLERK

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SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY
WASHINGTON FEDERATION
OF STATE EMPLOYEES,
Plaintiff,
v.
DEPARTMENT OF SOCIAL AND HEALTH
SERVICES, STATE OF WASHINGTON,
Defendants.

NO. 11-2-01028-4

ORDER GRANTING
PRELIMINARY INJUNCTION
AND SETTING SECURITY

[Clerk's Action Required]

This matter having come on regularly for hearing upon the motion of the plaintiff's attorney, Edward Earl Younglove III of YOUNGLOVE & COKER, P.L.L.C., for a preliminary injunction prohibiting and enjoining the State of Washington from letting any contracts for Children's Administration case management; the defendant having appeared by and through its attorney, Andrew Scott, Assistant Attorney General; the court having read the records and files herein, and being of the opinion that the defendant exceeded its authority is issuing a request for proposal for a contract(s) for child welfare case management services currently performed by the defendant's employees represented by the plaintiff; that the defendant's proposal to contract out such work is not exempt from the

ORDER GRANTING
PRELIMINARY INJUNCTION
1000-025

YOUNGLOVE & COKER, P.L.L.C.
ATTORNEYS AT LAW
WESTHILLS II OFFICE PARK
1800 COOPER POINT ROAD SW, BLDG 16
FO. BOX 7546
OLYMPIA, WASHINGTON 98507-7046
FACSIMILE (360) 754-6268
office@parrandyounglove.com
(360) 357-7791

1 provisions of RCW 41.06.142; that the plaintiff has sufficiently established a well ground ~~for~~ ^{of} these
2 employees being laid off from their employment without the defendant having complied ~~with~~ ^{with the}
3 provisions of RCW 41.06.142 and that such would cause serious and substantial harm ~~to~~ ^{to}
4 warrant injunctive relief; and the court being otherwise fully advised in the premises, now, ~~therefore~~ ^{before} it
5 is hereby

6 ORDERED that the plaintiff's motion for a preliminary injunction be and hereby is
7 **GRANTED**; it is further

8 ORDERED that the defendant, Department of Social and Health Services, State of Washington,
9 be and it hereby is enjoined from further actions in furtherance of a proposal for a contract ~~the~~ ^{the actual}
10 letting of a contract for child welfare case management services pursuant to the Request ~~for~~ ^{Proposal}
11 issued by the Department on February 18, 2011 unless and until the defendant has fully complied with
12 the provisions of RCW 41.06.142 and further order of the court; it is further

13 ORDERED that this injunction is conditioned on the plaintiff either depositing ~~the~~ ^{an amount of}
14 Three Thousand Dollars & 00/100 (\$3,000.00) into the registry of the court and held by ~~the~~ ^{the clerk of the}
15 court in an interest bearing account or the furnishing of appropriate security in that ~~amount~~ ^{amount}, for the
16 payment of costs and damages as may be incurred or suffered by the defendant in ~~the~~ ^{the event it is}
17 ultimately determined that the defendant has been wrongfully enjoined; provided the court ~~may~~ ^{may} review
18 the amount of the required security upon Motion by the Defendant within Thirty (30) days of entry of ~~of~~ ^{of}
19 this order. *Oral opinion appended by agreement*

20 DATED this 20 day of May, 2010.

21 
22 JUDGE THOMAS MCPHEE

ORDER GRANTING
PRELIMINARY INJUNCTION
1000-025

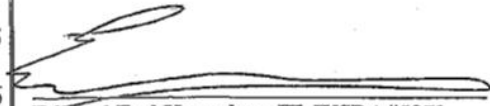
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YOUNGLOVE & COKER, P.L.L.C.
ATTORNEYS AT LAW
WESTHILLS II OFFICE PARK
1800 COOPER POINT ROAD SW, B-DG 16
PO BOX 7846
OLYMPIA, WASHINGTON 98507-7846
FACSIMILE (360) 754-8258
office@pattandyounglove.com
(360) 357-7791

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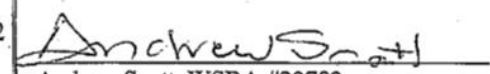
YOUNGLOVE & COKER, P.L.L.C.



Edward Earl Younglove III, WSBA#5873
Attorney for Plaintiff

Approved as to form and for entry,
notice of presentation waived:

ROBERT M. MCKENNA
Attorney General



Andrew Scott, WSBA #23783
Assistant Attorney General
Attorney for Defendant

ORDER GRANTING
PRELIMINARY INJUNCTION
1000-025

YOUNGLOVE & COKER, P.L.L.C.
ATTORNEYS AT LAW
WESTHILLS II OFFICE PARK
1600 COOPER POINT ROAD SW, BLDG 16
PO BOX 7846
OLYMPIA, WASHINGTON 98507-7846
FACSIMILE (360) 754-8289
office@parrandyounglove.com
(360) 357-7791

What follows is a verbatim transcript of the oral opinion of Judge Thomas McPhee.

THE COURT: All right. Thank you.

Well, ladies and gentlemen, I'm going to take a recess now and review some of these materials, and then I'll come back out and announce my decision. I suspect that this recess will be greater than 15 minutes but less than a half an hour. We'll be in recess.

(A recess was taken.)

THE COURT: Please be seated, ladies and gentlemen. I am happy that I was able to take some additional time to review the arguments made by counsel here, because as I indicated, this went into an area that I had not anticipated and about which I needed more time to review. I have now done so, and I'm thankful for that opportunity.

The uncertainty was essentially the process by which these RFPs would change the way the Department does business in the field of dependency. And I had read both the declarations of Ms. Livingston and the declaration of Ms. Cordova but had not gone through the portions of the actual RFP itself that Mr. Scott referred me to. The information that I learned there is important in this decision-making process.

I come to this process with a fairly significant advantage, and that is having recently spent two years at our Family and Juvenile Court doing dependency work on a regular basis. Every week a significant part of my time was devoted to these cases, so I can to understand the system, how it works, what responsibilities social workers, particularly CWS social workers, have in this field. And I think I'm able to make some meaningful comparisons with the duties outlined in the RFP that I found were not particularly well developed in the declarations that were submitted to me.

An agency has the power to act within the grant of authority made to it by the Legislature. That principle stands in nearly every aspect of public agency law that we deal with, whether it's rule making, as in the prior case, whether it's administrative appeals from decisions made by agencies, or in this case, where it is a challenge to an action taken or proposed by an agency brought under the umbrella of a declaratory judgment action. And I presume that's ultimately the basis for bringing this action.

An injunction can issue in anyone of those instances where a court finds that an agency has exceeded its authority. Under the APA, it is statutory. Under common law and the Declaratory Judgment Act, it is of course the *Tyler Pipe* elements. And all of them are essentially identical. They all require, in the first instance, a showing of a clear legal or equitable right. And a state employee or an organization representing a state employee such as the Federation here has a clear legal or equitable right to seek to enjoin a state agency where the state agency is acting in excess of its authority. That is how this matter comes before me today.

The issue is whether this RFP proposes a contract that exceeds the authority of the Department because of the Department's failure to comply with RCW 41.06.142. The Department contends that it is exempt from that process; the Federation contends that it is not.

I conclude that on the basis of the record before me, the Federation has made a clear showing that the Department is not exempt from the provisions of 41.06.142 in the contract that it proposes to enter into based upon the RFP before me.

The issue is whether the Department is simply converting its existing contracts to performance-based contracts or whether it is, in fact, in this process, seeking to implement the plan by which the Legislature and the governor agreed should proceed to in the future assess a significant change in the way in which services are provided to families and children under the jurisdiction of the Department.

The result that I conclude must be drawn here is that the Department is going far beyond the process of simply converting its existing contracts to performance-based contracts. In fact, the transfer of duties from its employees, the social workers, to the private contractor that would occur under this RFP is significant

and pervasive, and in my estimation, it shortcuts the process by which the Legislature developed the plan for assessing whether that transfer should ultimately occur.

Mr. Scott pointed me to pages 29 and 30 of the RFP as an indication of where the division of responsibilities between Children's Administration and the lead agency are outlined. I found that helpful. I also found particularly enlightening the table 2 of roles and responsibilities contained at pages 31 through page 40 of the RFP. An examination of that table shows just how significant the transfer of responsibilities is from the social worker employees to this lead agency. Illustrations abound. If one examines the declaration of Ms. Cordova and her explanation of what responsibilities are retained by Department employees and which ones are transferred to the lead agency here, I believe one comes away with a different impression than you get from reading this table 2.

A lot of what Ms. Cordova addresses is CPA work, Child Protective Agency work. She also addresses a lot of retained responsibilities for post-decree work, such as guardianship and whatnot. When you get to CWS work, she merely says that the social workers retain case management responsibilities. But when you read this table, you see how all of the important work and the detail work is transferred to the lead agency. For instance, the Children's Administration is expected to participate in family team decision making meetings; but when you read what the responsibilities of the lead agency is, it is the responsibility to convene the meeting, to conduct the meeting. The social worker is placed in a position of merely monitoring what is done there.

When you look at the role in parent, child, and sibling visitation, which is an extremely important part of the services provided by the Department, you see that while the Children's Administration retains the responsibility for developing a visitation plan in collaboration with the family team, you also see that the role of the lead agency is to effectively organize, choose, and monitor that process.

In looking at the area where service review meetings is addressed, an important part of any dependency, you see that the Children's Administration is to actively participate in the SRM, among other things. But then the responsibility for convening and facilitating the meeting, to seek input, to identify available services, is left to the lead agency.

Where one is dealing with the ISSPs, which are the regular monthly reports submitted to the courts or the plans for proceeding with the dependency, you see that the primary responsibilities are all shifted over to the lead agency. These are the types of transfers that the Legislature and the governor contemplated as part of the pilot projects to see not only if they can be more efficiently and cost effectively delivered in a method different than the Department is doing now, but also, I suspect, to address the very real and important responsibilities that the Department has to make sure that children and families get appropriate services and the best services reasonably available within existing resources.

One can only read this RFP and conclude that the Department has determined that it would proceed with implementing a great many of the features that will be studied in these pilot projects without going through the process mandated by the Legislature. Accordingly, I conclude that this RFP goes significantly beyond the conversion of existing contracts to performance-based contracts. Accordingly, I conclude that the exception for those contracts provided in the statute does not apply here and that the terms of RCW 41.06.142 apply and have not been complied with by the Department.

The other two prongs of *Tyler Pipe* must also be addressed. And, of course, the second one is sufficiently shown here. Mr. Scott has argued that there can be no real or threatened invasion of the clear legal or equitable right until after you see what the RFP ultimately results in. I conclude otherwise. I conclude that under the standard of a threatened invasion of a clear legal or equitable right has been shown here and is evident in the terms of what the RFP proposes. There must then be an actual or threatened substantial damage.

The changing role of the Children's Administration social workers contemplated by this RFP cannot but result in a substantial decrease in the employment of current social workers by the Department. The fair conclusion of the role of Children's Administration in the contracts proposed here in the RFP is that of oversight administration and not the type of active participation and active responsibility for the day-to-day

work of the Department. That can only result in a significant reduction in force by the Department. In fact, that is the very purpose of the pilot programs and the undertaking for the assessment program that is contained in the act that we've been discussing here.

For all of those reasons, I conclude that the Federation is entitled to a preliminary injunction enjoining the Department from proceeding with the solicitations on this RFP until and unless the provisions of RCW 41.06.142 are complied with. That is my decision.

MR. SCOTT: May I be heard briefly, Your Honor?

THE COURT: Yes.

MR. SCOTT: I heard the court say that the injunction will only be in place unless or until 41.06.012 is complied with, which would entail the notice and the other constraints in that statute; is that correct, Your Honor? 41.06.142 requires the Department to give 90 days notice to the employees. I understood your ruling to be that the preliminary injunction would be in effect until the Department complied with that statute; for 90 days the Department would then be entitled to cure its defect and then go forward under that statute.

THE COURT: Well, counsel, I think you are correct. I haven't heard from Mr. Younglove in that respect, but the claim here, as I understand it, is violation of that statute. And I have concluded that they have shown that there is a violation of the statute in the way that they are proceeding now. And clearly the statute gives the Department some rights to proceed with contracting out work when certain conditions are met. So I think that --

MR. SCOTT: Thank you, Your Honor.

THE COURT: -- you are correct in that regard. Mr. Younglove, do you have any different view?

MR. YOUNGLOVE: No, Your Honor. I heard the court's ruling. I think I understand it. I'm not sure I necessarily agree with the limited description of what's required by .142.

THE COURT: I have made no determination in that regard.

MR. YOUNGLOVE: I understood that, Your Honor.

THE COURT: All right.

MR. SCOTT: Thank you, Your Honor.

THE COURT: Mr. Younglove, you are the prevailing party here. How do you wish to proceed to reduce this to a written order?

MR. YOUNGLOVE: Well, Your Honor, I have an order prepared that I shared with counsel. It would need to be changed a bit to incorporate the language the court just added. We could perhaps -- I think we could probably agree on an order and submit it to the court.

THE COURT: Why don't we -- the --

MR. YOUNGLOVE: I don't have any fear that the Department's going to go ahead tomorrow.

THE COURT: Should we schedule this for one week from today, then?

MR. SCOTT: One week from today, Your Honor. There also -- the Department has quantified what the cost would be associated with ceasing this RFP. It's my understanding under the rule that there needs to be some security posted. I have preliminary figures. I would like to ask for an opportunity to address that a week from now, as well.

THE COURT: All right. This is a preliminary injunction. And I presume there is a bond that would be required. I will check on that and hear from you at some point, Mr. Younglove.

MR. YOUNGLOVE: Yes. I believe the rule requires security, and that is an issue that I believe we would have to address to the court.

THE COURT: All right. We shall meet again next week, then.

MR. SCOTT: Thank you, Your Honor.

MR. YOUNGLOVE: Thank you, Your Honor.

(Conclusion of the May 13, 2011, Proceedings.)