



NEWS Bulletin

DFPS leadership obstructing Caseload Standards, “cannot be relied upon” to follow court orders

Steep penalties begin for being in contempt

On Tuesday, November 5th, Judge Janis Graham Jack held a hearing with DFPS officials and plaintiffs representing foster children to review the state’s progress toward implementing mandated fixes to the foster care system. Dozens of changes were detailed by Judge Jack following her 2015 ruling that found the State of Texas violated the constitutional right of foster children to be kept free from harm by the state. For four years, DFPS has appealed the ruling and vacated some of the orders mandated by Judge Jack, but the major components have been upheld by the federal appeals court. Among other fixes, DFPS has been under an order to establish caseload standards in CPS-Conservatorship, RCCL Investigations and Licensing (HHSC), as well as ensure 24 hour awake supervision for foster kids in placements with more than 6 children.

During the hearing, the process DFPS has been using to begin developing caseload standards was picked apart by Judge Jack, who described DFPS’s actions as, “Obstruction. Obstruction. Obstruction.” After the portion of the 2015 ruling related to caseloads was upheld by the federal appeals court, DFPS submitted a Request for Information (RFI) to develop a methodology to study the development of caseload

“Obstruction.
Obstruction.
Obstruction.”

standards in January 2019. After receiving no response, the agency then sought out a contract with

Dr. John Fluke, from the University of Colorado at Denver. Dr. Fluke has argued in other courts that there is no relation to better outcomes and lower caseloads. This runs contrary to the volumes of reports, studies, and research indicating otherwise. Judge Jack harshly criticized DFPS leadership for hiring a well known critic of lower caseloads to develop a plan to lower caseloads in the agency.

Lower caseloads... for contractors only

The fact that DFPS has agreed to keep caseloads at 14 for OCOK, the private contractor under the Community Based Care model was also highlighted by Judge Jack. DFPS officials testified at the Capitol that OCOK would not take on case management responsibilities unless caseloads were kept at 14 to 1. DFPS requested and received this funding from legislators, but claimed to Judge Jack, “it’s a different matter,” and argued that the agency only requested the funding for 14-1 caseloads for OCOK, but didn’t agree to it somehow. Judge Jack also questioned the reasoning behind spending up to a million dollars to study a method to develop caseload standards when so many studies, guidelines and reports already exist.

Financial penalties were also levied against DFPS for not ensuring 24 hour awake supervision for foster children in all placements with more than 6 kids. Starting Friday November 8th, DFPS will owe the court \$50,000 each day that any

placement with more than 6 children does not have awake supervision. The fine doubles starting November 15th. At the hearing, Judge Jack expressed her frustration with the agency not being truthful with the court about whether Residential Treatment Centers and General Residential Operations had overnight staff to ensure children were safe from abuse. In 2014, DFPS testified that all these facilities had awake supervision overnight. During monitoring visits, staff working for the Special Masters documented that this was not happening in most of the facilities they visited. DFPS claimed they didn’t understand the order for awake supervision applied to all facilities, which drew intense criticism from Judge Jack.

When will Legislators hold DFPS accountable?

The unwillingness of DFPS to cooperate with federal court orders stems directly from the lack of accountability demanded by State Legislators. DFPS is now on it’s fourth commissioner since the federal lawsuit was filed by Children’s Rights in 2011. State leadership has unsuccessfully spent millions to fight the case in court and appeals. Instead of pushing state leadership to implement changes, State Representatives and Senators have allowed this failed strategy to continue unchecked. The steep fines and contempt ruling should serve as awake up call to elected officials—a change of course in the strategy is needed not just to appease federal courts, but to ensure foster kids constitutional rights aren’t violated.