Center *for the* Study *of* Social Policy
Ideas into Action

Paul Vincent

Michelle H., *et al.* v. McMaster

PROGRESS REPORT: SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES

April - September 2021: *Executive Summary*

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EXECUTIVE SUMMARY

BACKGROUND & CONTEXT

What is the *Michelle H.* Final Settlement Agreement?

In January 2015, the advocacy groups Children's Rights and South Carolina Appleseed Legal Justice Center, along with the Wyche law firm, filed a lawsuit on behalf of the nearly 4,000 children in foster care in South Carolina. The lawsuit alleged that the Director of the Department of Social Services (DSS) and the Governor were harming children by failing to address long-standing problems in the operation of the foster care system. Following a long period of negotiation, the parties reached a settlement, which was approved by U.S. District Judge Richard M. Gergel on October 4, 2016 (referred to as the Final Settlement Agreement, or the FSA).

The FSA requires the state to reform key aspects of the DSS foster care system, and establishes performance benchmarks that it must meet and sustain before exiting the lawsuit. These areas of focus include: case manager and supervisor caseloads; visits between children in foster care and their case managers; family time with parents and siblings; investigations of allegations of abuse and neglect of children in foster care; appropriate foster care and therapeutic placements; and access to physical and behavioral health care for children in foster care. The FSA also finalized some of the requirements that were agreed upon in in the Interim Relief order in 2015, including ending the practice of allowing children in state custody to stay overnight in hotels and DSS offices; of placing children age 6 and under in group facilities; and of leaving children in juvenile detention facilities simply because there are not appropriate foster care placements.

The FSA appoints two independent Co-Monitors—Paul Vincent and Judith Meltzer—to support the state in implementing the FSA requirements and report regularly on progress. The Co-Monitors issue reports to the Court and the public every six months. This document summarizes the findings included in the tenth monitoring report, covering the period April to September 2021.

What does DSS do?

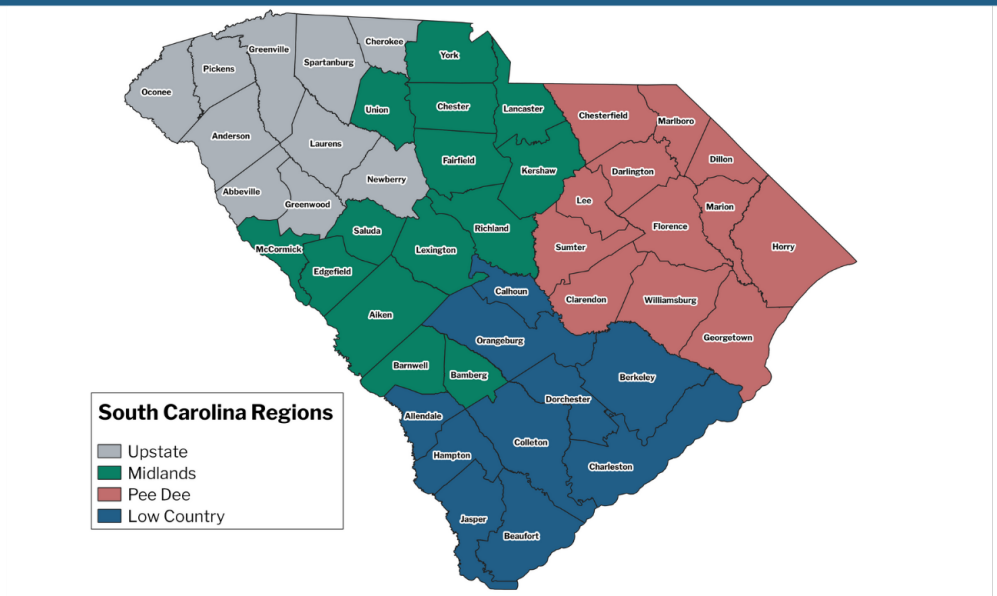
DSS is a cabinet level agency that oversees investigations of child abuse and neglect, preventative services for families, foster care, adoptions, child care, and child support, as well as Adult Protective Services (APS) and economic assistance programs such as Temporary Assistance for Needy Families (TANF), which provides financial assistance to families experiencing poverty and programs to support employment, and Supplemental Nutritional Assistance Program (SNAP), which provides nutrition benefits to families earning low wages to purchase food. DSS is structured to deliver services through regional and county offices; the state's 46 counties are each part of one of four regions—Midlands, Upstate, Pee Dee, and Low Country.

The FSA pertains to children who have been involuntarily removed from the custody of their parents or guardians due to abuse or neglect, and taken into the custody of DSS. These children reside in foster care or "out-of-home" care. DSS, along with its private agency partners, is responsible for caring for them on a temporary basis, preferably while the children remain with their siblings and reside with family members or someone else known to their family, while working to address safety issues so they can return home to their parents or guardians (referred to as reunification). When reunification is not possible, DSS must work towards another permanent, long-term plan, such as guardianship or adoption.

How is DSS funded?

Although states have primary responsibility for ensuring the welfare of children and their families, the federal government provides financial support through a number of significant sources. Specifically, the federal Children's Bureau, within the Administration for Children and Families, distributes funds to states through mandatory spending programs authorized through the Social Security Act.[1] The largest of these programs is authorized under Title IV-E of the Social Security Act, and operated on an "open-ended" basis, meaning states

Figure 1. South Carolina DSS Regions and Counties



are entitled to receive reimbursement for a portion of every dollar spent on behalf of an "eligible" child.[2] Eligibility depends on the income level of the parent(s) from whose custody the child was removed. Even if a child's case is found to be Title IV-E eligible, reimbursement is allowed only for specific portions of certain eligible expenses.[3]

Because nearly all children in foster care are eligible for Medicaid, this is another important source of revenue for state child welfare systems. Medicaid can be used to cover non-direct health care services, such as rehabilitative services and services as part of therapeutic foster care.

State funding for foster care in South Carolina is allocated on an annual basis through the General Assembly agency appropriation process. The state fiscal year in South Carolina runs from July to June, spanning two calendar years.[4] The process is shown in the figure below.

Figure 2. South Carolina Fiscal Year Process

JULY-AUGUST	SEPTEMBER-NOVEMBER	NOVEMBER	EARLY JANUARY	BY JULY 1
The governor sends budget instructions to state agencies.	Agencies submit budget requests to the governor.	The Board of Economic Advisors issues an economic forecast. This forecast is updated throughout the budget cycle.	The governor submits their executive budget to the General Assembly.	The House and Senate review and pass the budget through the full floor votes. The budget must pass with a simple majority by the beginning of the fiscal year.

What has happened with funding as a result of the COVID-19 pandemic?

The regular budget cycle was disrupted in FY2020-2021 due to the COVID-19 pandemic. Because the General Assembly was unable to convene to agree upon a final appropriation, it passed a continuing resolution as a temporary measure. The resolution, passed on May 12, 2020, directed continued funding of the "ordinary" expenses of state government at the levels authorized for FY2019-2020, beginning July 1, 2020. Then, in June 2021, the General Assembly passed an appropriations bill for FY2021-2022, allocating $28,914,239 in new state recurring funds to DSS for child welfare programs.[5] This additional appropriation was meant to allow DSS to comply with its obligations to maintain prior increases in payments to foster parents and to increase salaries for case managers.[6] The allocation was $23,594,857 short of DSS's request, which had been estimated based on what DSS believed it would require in that year to comply with the obligations outstanding under the FSA at the time of its request.

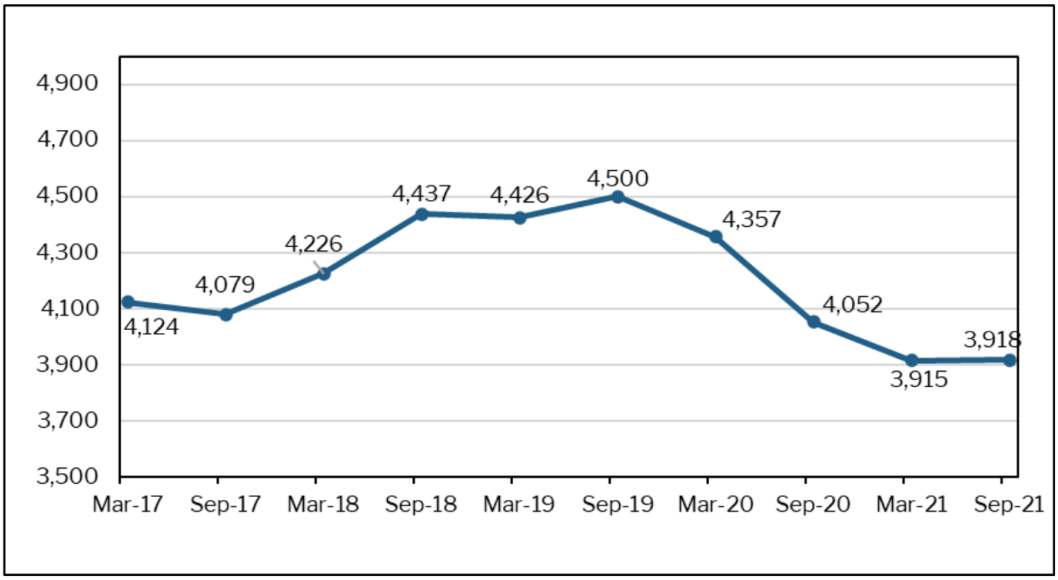
In October 2021, DSS submitted its budget request for FY2022-2023 to Governor McMaster. In January 2022, the Governor submitted his Executive Budget to the General Assembly. Both include a request for approximately $39 million to DSS for child welfare programs. The General Assembly is currently considering this request.

Who Does DSS Serve?

Over 1.1 million children under the age of 18 resided in South Carolina in 2020; during the monitoring period, 5,270 were placed in foster care at some point. , In an effort to build accountability and transparency, DSS now regularly publishes real-time data about children in out-of-home care on its public website. Demographic data on age, race, and gender are available, as well as information about where children are placed and how long they have been in out-of-home care. On January 3, 2022, for example, 3,978 children were in DSS's custody, and 1,451 (36%) of these children had been in foster care for 24 months or longer.

The foster care population remained relatively stable from the end of the prior monitoring period (when there were 3,915 Class Members in foster care on March 31, 2021).[7] As seen in Figure 3, the foster care population has dropped significantly since the start of the COVID-19 pandemic in March 2020, but the rate of decrease has leveled off.

Figure 3. Class Members in Foster Care March 2017- September 2021



Included on this page are some demographics of the foster care population broken down by race, age, and gender.[8] About 50 percent of the foster care population is White as of November 30, 2021, compared to 57 percent of the child population in the state.[9] Though Hispanic is an ethnicity and not a race, the calculations herein for White, Black, and Multiracial do not include Hispanic children; those who are indicated to be Hispanic are instead included in the "Hispanic" category, which represents about six percent of the foster care population.[10] Slightly more than one-third of the foster care population are adolescents (ages 13 to 17), and almost 40 percent are ages six and under.[11] Slightly less than half of children in foster care are reported to be female.[12]

Figure 4. Population of Children in DSS Custody, by Reported Race

as of November 30, 2021

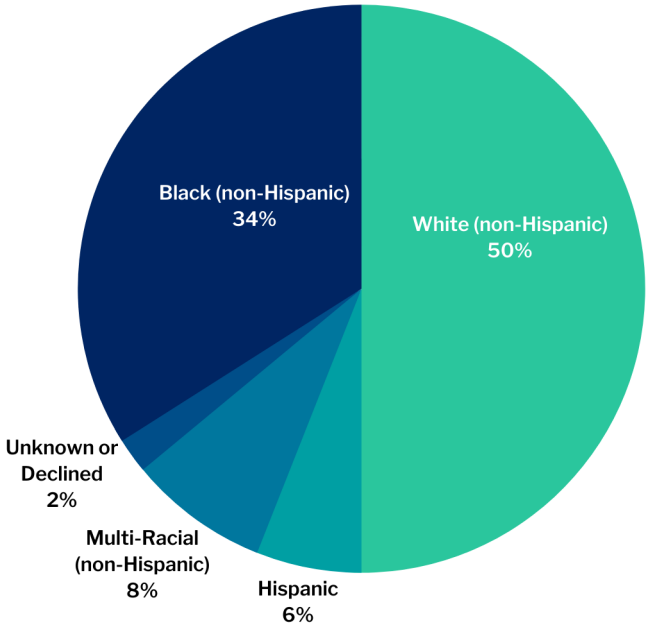


Figure 5. Children in DSS Custody, by Reported Age

as of January 3, 2022

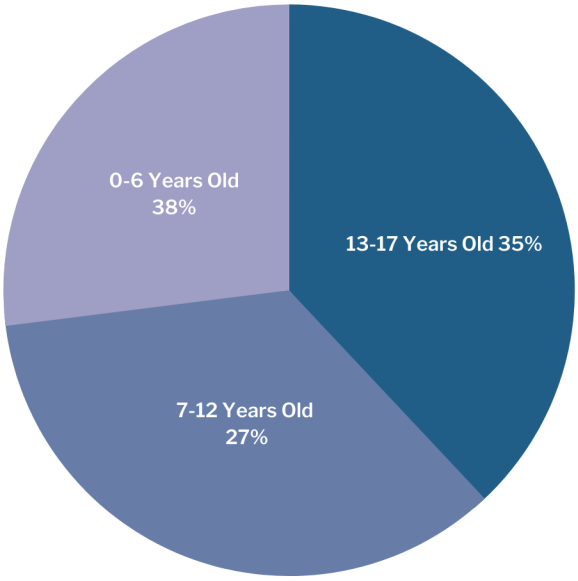
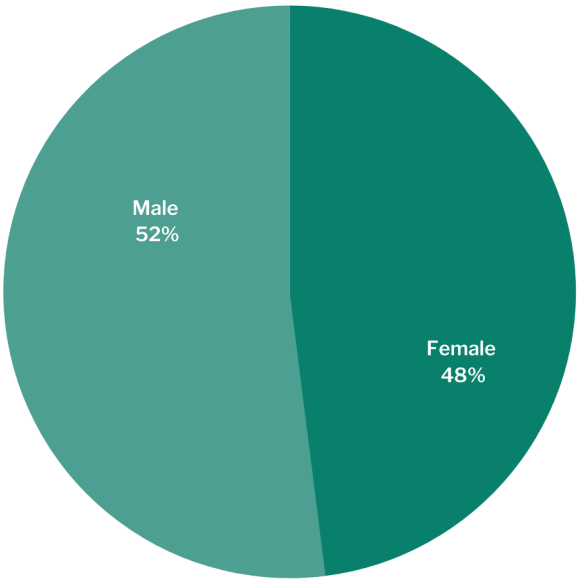


Figure 6. Children in DSS Custody, by Reported Gender

as of January 3, 2022



SYTEMS REFORM PROGRESS UPDATES
APRIL - SEPTEMBER 2021

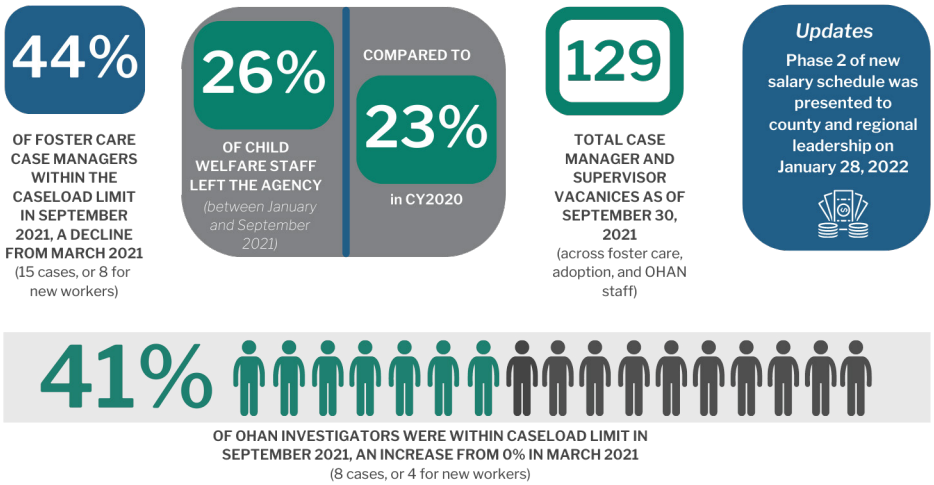
During this monitoring period, the COVID-19 pandemic continued to intensify the pressure on the child welfare system in South Carolina—a system already under resourced and struggling to engage and support families in meaningful, strength-based ways. As detailed in the full monitoring report, under the leadership of Director Leach, DSS worked to push its reform efforts forward where possible, despite challenges. Disbursement of funding from the General Assembly in July 2021 helped DSS to make slow but steady progress in some key areas, including salary increases for staff, the placement of children outside of institutional settings (meeting one of the related FSA targets for the first time), and the identification of kin resources for children taken into DSS custody.

Despite staff effort, much work remains. A lack of sufficient fiscal resources; an inadequate system for placement and community supports; a need for more robust agency partnerships; and a new approach to the engagement of children, families, and community providers continue to prevent DSS from meeting the requirements of this lawsuit. As a result, DSS has been unable to actualize the goals of its leadership team or change the outcomes and experiences of the thousands of children and families that have been involuntarily brought under its care.

Staffing and Caseloads

A sufficient, qualified, and trained workforce with manageable caseloads is foundational to a well-functioning child welfare system and has been a priority focus of DSS's reform. However, high caseloads for case managers and supervisors continue to be a challenge. Although there were small improvements noted for Out-of-Home Abuse and Neglect (OHAN) investigators and adoption case managers, less than half of all case managers had caseloads within acceptable limits in September 2021. Record high staff attrition made it consistently more difficult for DSS to give staff any relief. Between April and June 2021, DSS lost 10 percent of its staff—the highest percentage of staff exits during one quarter since 2018. The pace of turnover began to slow towards the end of the monitoring period—with seven percent of child welfare staff leaving their positions between July and September 2021—suggesting that the implementation of long-awaited case manager salary increases in July 2021 may help sustain and maintain staff going forward. As long as caseloads and staff turnover remain high, case managers' ability to authentically engage families, maintain meaningful connections between children and the family members from whom they have been separated, and effectively plan for children to return home, will be limited.

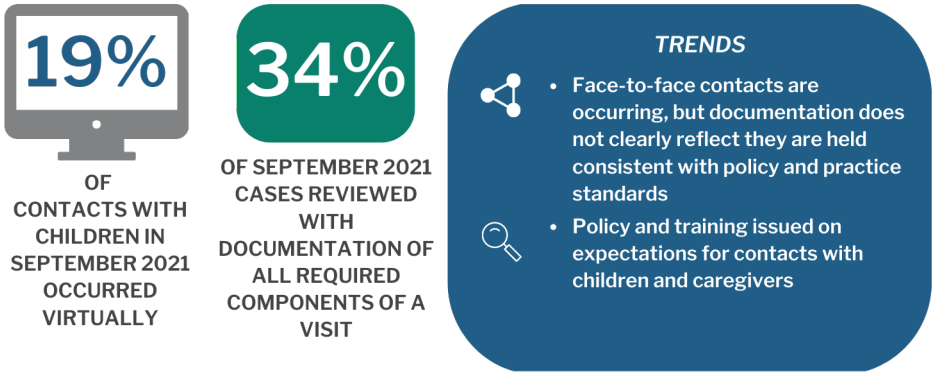
Figure 7. Key Developments: Staffing and Caseloads from April to September 2021



Case Manager Visits with Children

At least once a month, DSS case managers are required by DSS policy and the FSA to have face-to-face visits with children in foster care and their caregivers. Depending upon the needs of the child, the DSS case manager may see children and their caregivers more often. At least half of those visits must be in the child's placement. During visits, case managers are required to assess the child's status in safety, physical and emotional health, and to ensure that the child's needs are being met. Historically, Co-Monitor staff found it difficult to verify reported quantitative data upon review of documentation of visits in CAPSS, and Parties agreed that a case manager's documentation of a contact(s) with a child in CAPSS should reflect each of the Department's policy and practice expectations for a visit. Each monitoring period, a statistically valid sample of such documentation is assessed in a case record review to determine how often visits that reflect all required elements are being held. Though contacts between case managers and the focus child were documented for 100% of cases reviewed (using records from September 2021), many of these contacts were not in accordance with each of the visit requirements. Case managers saw most (80%) of the children in person, and the majority (80%) of children were at their place of residence during the contact. But reviewers found documented practices consistent with every required component of a visit pursuant to DSS policy and the FSA in one-third (117 of 345) of records.

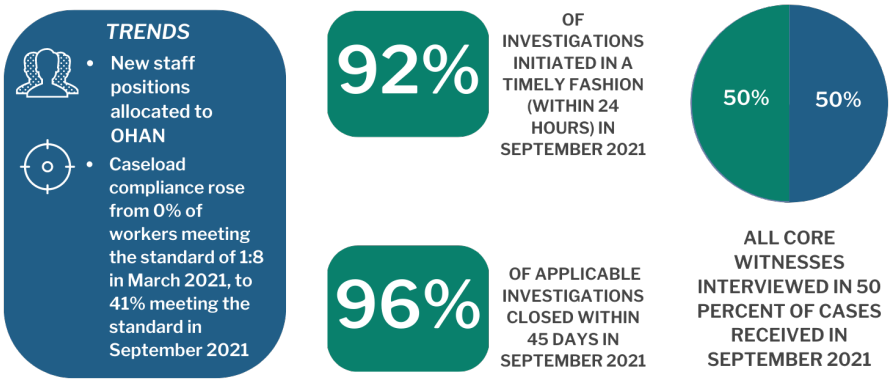
Figure 8. Key Developments: Case Manager Contacts and Visits with Children from April to September 2021



Out-of-Home Abuse and Neglect Investigations

The work of screening and investigating allegations of abuse and neglect of children in foster care—completed by DSS's Intake Hubs and Out-of-Home Abuse and Neglect (OHAN) unit—is a critical function of any child welfare system.[13] Children are separated from their families and taken into foster care based upon a determination that they have been abused or neglected by their caregivers and are not safe with their families, thus ensuring their safety and well-being while in state custody is a primary obligation. Although progress toward some FSA requirements remains stagnant, OHAN staff have continued to show steady growth in meeting the timeframe for responding to allegations of abuse or neglect of children in foster care—a vital practice for assessing children's safety. OHAN leadership and staff have continued to collaborate with Co-Monitor staff in reviewing and reflecting on their practice, and have displayed a deepening understanding of best practice in this area. As discussed in prior reports, the unit has been hamstrung in large measure by a persistent lack of resources. The recent addition of a significant number of new staff positions in this unit is a strategic investment by DSS that is likely to pay dividends.

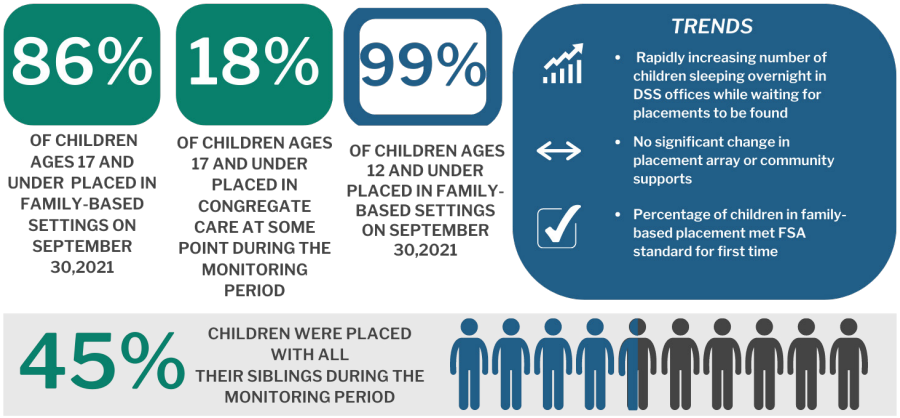
Figure 9. Key Developments: OHAN Intake and Investigations from April to September 2021



Placements

Child welfare policy and best practice requires that children in foster care be in family-like environments, in or close to their home communities, and with kin caregivers and siblings whenever possible. DSS's progress in further reducing reliance on congregate care during this period—particularly for children ages 12 and under— is a significant accomplishment. The continued increase in placement with kin, and slow but steady shift to embracing a mindset that children belong with their families and loved ones, whenever possible, has the potential to have profound consequences for families in the long term. For now, however, the identification and maintenance of appropriate placements and supports for children in foster care continues to be a substantial challenge for DSS. An escalating placement crisis has meant that placement decisions are still based on availability rather than on the unique needs of children. This has often resulted in children being placed far from their home communities and schools, and separated from their siblings, family members, and other important people in their lives, sometimes without opportunities for contact with them.

Figure 10. Key Developments: Placements from April to September 2021



Children Sleeping in DSS Ofices

A lack of community-based services has meant that some potentially supportive placements cannot be considered or sustained. These long-standing systemic issues, combined with the realities of the COVID-19 pandemic—ubiquitous staff shortages, overtaxed agency partners, closures of some placement resources, and exhaustion at all levels—have meant that an ever-increasing number of children have been held at DSS offices for days or even weeks at a time while DSS searches for appropriate and stable placement. Sometimes these children sleep in offices, and sometimes they are driven to emergency placements for a few hours at night, only to return to the office the next morning. This trend began toward the end of the prior monitoring period and has continued to escalate to an unprecedented degree. The lack of so much as a stable place to stay sends children who have already been separated from their loved ones the message that they are not cared for and makes the maintenance of a sense of stability, and continuity in education, connections to community, and services near impossible. Some children have reportedly begun to refuse to go to placements that they know are temporary and will not meet their needs, expressing that they would prefer just to continue to wait it out at a DSS office.

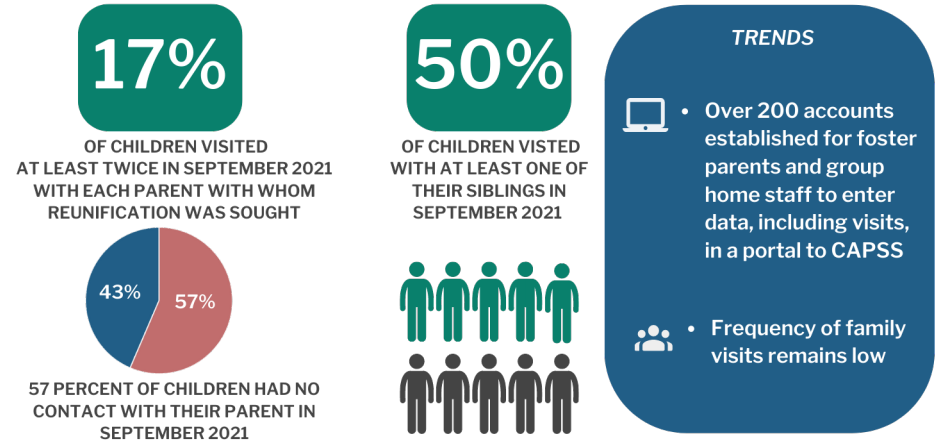
Lack of Progress in Implementing the Placement Plan

The realities of children staying overnight in DSS offices throughout the state present an acute and immediate challenge for DSS, but, on a broader scale, the trend is symptomatic of significant underlying gaps in implementation of the Court approved Placement Implementation Plan to which DSS committed in early 2019. Meaningful change will be difficult or impossible to achieve without an influx of resources and strong partnership with other state agencies to ensure that an adequate placement array is developed, and a system of robust community supports is in place. The lack of flexible, intensive home and community-based resources to support children and foster and kinship providers throughout the state remains a primary concern, as reiterated throughout the monitoring report. Additionally, DSS remains unable to provide performance data with respect to a number of important FSA placement measures.

Family Time

Regular and substantive contact between children in foster care and their parents helps to facilitate reunification and reduce the trauma of family separation. When children are separated and in different placements, it is crucial that they maintain contact and a relationship with their siblings. Children in foster care also benefit from ongoing, supportive relationships with other family members.

Figure 11. Key Developments: Family Time from April to September 2021

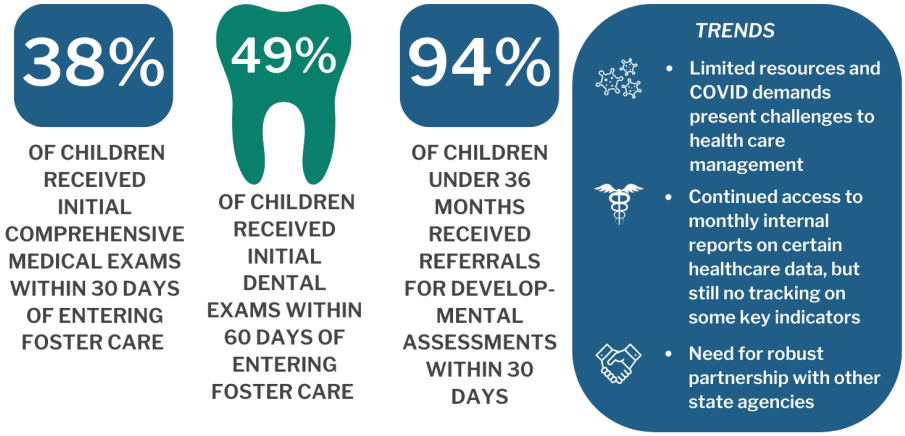


DSS's woefully inadequate performance with respect to maintaining and supporting connections between children in foster care and their family members demonstrates the need for more manageable caseloads and a shift in approach to engaging families. In September 2021, only 17 percent of children visited twice with the parent(s) with whom they are to reunify, as required by DSS policy. The records of more than half (57%) of the children reflected no documented contact of any kind, either in person, by video, or by phone with the parent(s) with whom the child is to reunify. In addition, only half (50%) of all siblings in foster care and living apart during the month of September 2021 had any contact during that month. This is despite DSS efforts to emphasize the importance of family time through the distribution of practice resources, visitation awareness trainings, and improvements to electronic records systems to make the documentation of visits less burdensome.

Health Care

Child welfare systems must be able to quickly identify children's physical and behavioral health needs, provide high quality preventative and acute care, track care delivery, and communicate key health care information to families, caregivers, and partner agencies. DSS's Office of Child Health and Well-Being continues to serve an important function in documenting and coordinating the health care needs of children in DSS's care. Despite best efforts, though, DSS is not yet seeing anticipated improvements in ensuring timely initial comprehensive health assessments and periodic well visits for all children, and significant gaps in data capacity remain. DSS's health care infrastructure has been further strained by the demands of the COVID-19 pandemic, which has contributed to vacancies in DSS's already limited nursing staff. It continues to be essential that DSS obtain the resources it needs to do this important work, and that DSS intensify its efforts with the state's Medicaid and mental health agencies and with community partners to develop an array of community treatment and support services that are accessible to children and their families and caregivers.

Figure 12. Key Developments: Health Care from April to September 2021



OPPORTUNITIES AHEAD

Looking ahead, though staff attrition is likely to continue to be a challenge, as it is across the country in the wake of the COVID-19 pandemic, DSS leaders are hopeful that the case manager salary increases, which will continue to be implemented over the coming months, will attract new candidates and incentivize a greater number of workers to remain at the Department. A review currently underway, by the Co-Monitors and DSS, in partnership with DJJ and community stakeholders, will assess the needs and barriers for children who are involved with both DSS and DJJ, in an effort to learn how to better meet their needs. There is opportunity for deeper partnership with the new leadership team at the South Carolina Department of Health and Human Services (DHHS), and other cross-agency collaboration, maximizing the use of Medicaid-funded services to expand the array of available community-based supports. Implementation of key elements of the Placement Implementation Plan, which have long been delayed, have the potential to have a broad-scale impact across areas of practice. Designation of some of the more than $2 billion in new federal COVID-19 funds available to the State to DSS priorities could allow it to move forward on many of the strategic priorities that have long been stalled due to lack of funding. Taken together, these steps could significantly change the experiences of children and families who have long been waiting to feel the impact of the legal action brought more than five years ago on their behalf.

ENDNOTES

[1] Stoltzfus, Emilie (July 30, 2018). Child Welfare Funding in FY2018. Congressional Research Service. https://fas.org/sgp/crs/misc/R45270.pdf.

[2] The Title IV-E program was established by HR. 3434 Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272).

[3] For example, states receive 50% reimbursement for eligible administrative costs; 75% for eligible training costs; and reimbursement at the Medicaid matching rate (FMAP rate, see below) for board payments. (Section 474(a)(3)(A),(B),(C),(D), and (E) of the Social Security Act.).

[4] In accordance with state practice, fiscal year designations reference the July year in which funding is allocated, and the June year in which the fiscal period ends. For example, FY2022-2023 references the period from July 2022 through June 2023.

[5] To see the bill, go to: https://www.scstatehouse.gov/sess123_2019-2020/bills/3411.htm.

[6] In May 2020, DSS utilized funding available as a result of COVID-related legislation to temporarily increase foster home board rates to the USDA-based rates of $20.03, $23.41, and $24.72 per day for foster family homes including kinship foster homes. DSS has since made this change permanent.]

[7] These data do not include children who resided in other institutional settings on the last day of the monitoring period.

[8] Data provided by DSS.

[9] To see child population data from Kids Count Data Center, go to: https://datacenter.kidscount.org/data#SC/2/0/char/0.

[10] DSS does not record Hispanic or Latinx as a category in race data published on its public dashboard but does capture Hispanic ethnicity as a category in placement data. The Co-Monitors calculated the Hispanic category as those children who were marked as a "Yes" for Hispanic ethnicity, including 11 children who were indicated as both Black and Hispanic, and 58 children who were indicated as both Multiracial and Hispanic.

[11] To see DSS's data dashboard, go to: https://dss.sc.gov/about/data-and-resources/foster-care-dashboard/.

[12] DSS does not collect data on children who identify as gender neutral or non-binary.

[13] Intake Hubs are regionally-based call centers responsible for receiving reports of alleged abuse and neglect of children and vulnerable adults, conducting phone interviews, assessing the risk of harm, and collecting relevant information from callers in order to create an intake and make screening decisions.

NOTE: For access to any of the infographics contained within this Executive Summary, please email CSSP at communications@CSSP.org.