

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TRACY L. SCHAEFFER,

Plaintiff,

v.

Civil Action No. ___ - ____

ALLEGHENY COUNTY, a municipal sub-division of the Commonwealth of Pennsylvania; MARC CHERNA, in his individual capacity as Director of Allegheny County Department of Human Services; WALTER HOWARD SMITH, JR., PH.D., in his individual capacity as Deputy Director of Allegheny County Office of Children, Youth and Families; WAYNE NOEL, in his individual capacity as case worker supervisor in the Allegheny County Office of Children, Youth and Families; FRANK JAKIEL, in his individual capacity as case worker in the Allegheny County Office of Children, Youth and Families; LEIRA FELIX, in her individual capacity as case worker in the Allegheny County Office of Children, Youth and Families; ZACHARY POVINSKI, in his individual capacity as case worker in the Allegheny County Office of Children, Youth and Families; and CLAIR DOE (pseudonym), in her individual capacity as case worker in the Allegheny County Office of Children, Youth and Families,

JURY TRIAL DEMANDED

Defendants.

COMPLAINT

I. PRELIMINARY STATEMENT

1. Pennsylvania counties, including Allegheny County, have obligations under federal and state law to ensure children's health and well-being, which requires the counties to take necessary and appropriate steps to place abused and/or neglected children in a safe

environment and thereafter to provide support and assistance, including financial assistance. Federal and state law also prohibit county child welfare agencies from discriminating against *kinship caregivers*, foster parents who are relatives of abused and neglected children, by treating them differently and less supportively than they treat non-kin foster families. Indeed, the same laws require child welfare agencies to give preference to such family placements. Unfortunately, Defendant Allegheny County and the Defendant officials who head its child welfare services and the Defendant employees who work there failed to heed federal and state law by effectively abdicating all legal and financial responsibility for four neglected children because they were taken in to be cared for by a relative.

2. Plaintiff Tracy Schaeffer is the great-aunt of four children whose parents are unable to provide them with necessary and adequate care because, *inter alia*, of problems with substance abuse and physical neglect. Ms. Schaeffer has cared for these children on a daily basis since early 2012, providing the financial and emotional support they need to have a healthy childhood. During this time, Allegheny County and the individual Defendants have ignored Ms. Schaeffer's repeated requests for help, financial and otherwise. Moreover, the agency's handling of Ms. Schaeffer's situation appears to reflect a custom, practice and/or policy of discriminatory treatment against kinship caregivers in violation of applicable federal and state laws.

3. As a consequence of Defendants' failure to provide foster care payments to Ms. Schaeffer, the children in her care have been, and continue to be, denied the full economic benefits to which they are legally entitled under federal and state law. Defendants' failure to provide these children the opportunity to receive foster care maintenance payments, which are meant to cover such basic necessities as the cost of food, clothing, shelter, daily supervision, and school supplies, contributes to the cycle of poverty in which so many foster children find

themselves. This civil rights action seeks declaratory and injunctive relief and damages to redress violations of federal and state law that have caused Ms. Schaeffer harm.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this 42 U.S.C. § 1983 civil rights action, brought to redress violations of the Social Security Act, 42 U.S.C. §§ 670–679c, and the Fourteenth Amendment to the United States Constitution, pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

5. Plaintiff’s claims for declaratory relief are authorized by 28 U.S.C. §§ 2201–2202 and 42 U.S.C. § 1983.

6. This Court has supplemental jurisdiction over Plaintiff’s pendent state law claims under 28 U.S.C. § 1367.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims that Plaintiff asserts occurred in this judicial district.

III. PARTIES

8. Plaintiff, Ms. Tracy Schaeffer (“Plaintiff” or “Ms. Schaeffer”), is a resident of Leechburg, Pennsylvania.

9. Defendant, County of Allegheny (“Allegheny County” or “County”), is a political subdivision of the Commonwealth of Pennsylvania, with offices located at Courthouse, 436 Grant Street, Pittsburgh, PA 15219. The County operates the Allegheny County Office of Children, Youth and Families (“OCYF”), which is responsible for providing protective and placement services for children in Allegheny County, Pennsylvania, who are experiencing abuse and/or neglect.

10. Upon information and belief, Defendant Allegheny County receives federal money under Title IV-E of the Social Security Act, 42 U.S.C. §§ 670–679c.

11. Defendant Marc Cherna is the Director of Allegheny County Department of Human Services (“DHS”), the department that houses Allegheny County OCYF. He is responsible for the policies, practices, and operation of OCYF, and for ensuring that the agency complies with the applicable provisions of federal and state law. He was at all relevant times hereafter mentioned acting under color of state law. He is sued in his individual capacity.

12. Defendant Walter Howard Smith, Jr., Ph.D. is the Deputy Director of Allegheny County OCYF. He is responsible for the policies, practices, and operation of OCYF, and for ensuring that the agency complies with the applicable provisions of federal and state law. He was at all relevant times hereafter mentioned acting under color of state law. He is sued in his individual capacity.

13. Defendant Wayne Noel is, or at relevant times was, a case worker supervisor for Allegheny County OCYF, and who at all relevant times was operating under color of state law. He is sued in his individual capacity.

14. Defendant Frank Jakiel is, or at relevant times was, a case worker for Allegheny County OCYF, and who at all relevant times was operating under color of state law. He is sued in his individual capacity.

15. Defendant Leira Felix is, or at relevant times was, a case worker for Allegheny County OCYF, and who at all relevant times was operating under color of state law. She is sued in her individual capacity.

16. Defendant Zachary Povinski is, or at relevant times was, a case worker for Allegheny County OCYF, and who at all relevant times was operating under color of state law. He is sued in his individual capacity.

17. Defendant Clair Doe is a pseudonym that is being used until such time as her identity can be ascertained. Upon information and belief, Clair Doe was at all relevant times hereafter mentioned an employee of OCYF who was operating under color of state law. She is sued in her individual capacity.

IV. FACTS

BACKGROUND

18. Ms. Schaeffer is the great aunt of four children under the age of 13, all of whom have been in her care continuously since January 2012.

19. The three girls are R.F., age 12; A.F., age 8; and I.F., age 5. The boy, T.F., is age 10.

20. The children's parents have a long and tragic history of drug use and repeated incarcerations related to the drug use, which have prevented them from providing necessary and proper care to the four children.

21. Beginning in 2009, Ms. Schaeffer has been asked at different times by the children's parents or the children's grandmother to care for one or more of the children. Ms. Schaeffer has provided the requested care.

22. OCYF has been aware of problems related to abuse and/or neglect of the children since at least 2009.

23. On March 21, 2011, the Bridgeville Borough Police investigated the children's parents for suspected drug use. A copy of the March 21, 2011 policy report is attached as Exhibit 1.

24. The police arrested and detained the children's mother and father.

25. The responding police officer contacted Defendant Frank Jakiel at OCYF with concerns about the children's "general safety." Exh. 1.

26. The police report portrays a drug house, where three people were arrested within the previous month, one of whom had overdosed on heroin at the premises. The officer faxed five police reports related to the parents to Defendant Jakiel, who promised to "check the well being of the children." Exh. 1.

27. The report also noted that the home was "in poor condition as far as a healthy environment for the children," with "weeks worth of dishes in [the] sink," and every room "filthy" and not "cleaned" or picked up for a while. There was a gas shut-off notice on the table. Exh. 1.

28. The police report indicates that in the evening an officer again "notified OCYF (Clair) of the living conditions at this residence and they advised they would be sending a case worker to check on this residence and family." (Parenthetical in original). Exh. 1.

29. Allegheny County OCYF allowed the children to stay with the neighbors until one of the grandmothers picked them up.

30. At the request of the grandmother, Ms. Schaeffer took custody of the three older children and cared for them for over two weeks. One of the children's grandparents cared for the youngest child, who was a baby at the time.

31. Ms. Schaeffer called Allegheny County OCYF repeatedly to ask for help in taking care of the children. She spoke with, among others, Defendant Povinski, who apparently was the children's case worker, and Defendant Noel, who was Povinski's supervisor.

32. On or about March 27, 2011, Ms. Schaeffer was told by Allegheny County OCYF that Povinski had checked out the house and that it was okay to return the children to the mother.

33. Ms. Schaeffer contacted the Bridgeville police department to inquire about the situation. The officer advised her that if it were him he would not return the children because it was a "drug house."

34. Several days later, Ms. Schaeffer received a call from the Leechburg police to tell her she needed to return the children. Ms. Schaeffer contacted Armstrong County Children, Youth and Family Services ("CYS") to inquire. Armstrong County CYS contacted Allegheny County OCYF, which confirmed to them that the children should be returned to the mother. Ms. Schaeffer promptly turned the children over to the Leechburg police.

35. Never once during this time did Allegheny County OCYF visit Ms. Schaeffer's home, meet with the children or even speak with them by phone.

36. None of the Defendants with whom Ms. Schaeffer communicated during this time offered her financial or other support, or even advised her that it might be available.

37. Ms. Schaeffer heard nothing more from or about the children until the night before Christmas, 2011, when she heard from family that the children had been left with the grandparents because the mother was "in bad shape" and was checking herself into rehab.

38. Upon information and belief, between December 26 and 30, both parents were at St. Clair Hospital in Mt. Lebanon, where OCYF interviewed them. The only thing OCYF did

was to call the grandmother. During this time, the children's father was arrested on a warrant and taken to jail.

39. Since January 2012, when Ms. Schaeffer was called to take emergency custody of the children, she has had sole physical custody of all four children.

40. At about 10:30 p.m. on January 4, Ms. Schaeffer received a telephone call from the children's grandmother, who was highly distressed. The grandmother said that she was trying to civilly commit her daughter and that the grandmother could not care for the children. The grandmother asked Ms. Schaeffer to come get the children. Ms. Schaeffer promptly drove and retrieved all four children.

41. Ms. Schaeffer called the Allegheny County OCYF hotline on the evening of January 4 to report that she had the four children. The hotline worker asked whether Ms. Schaeffer minded keeping the children, to which Ms. Schaeffer replied that she did not.

42. Ms. Schaeffer also contacted the Scott Township Police Department to tell them she had the four children and to ask for guidance on how to proceed. The Scott Township police officer advised Ms. Schaeffer to await further instructions from Allegheny County OCYF.

43. On January 5, 2012, the Scott Township Police Department responded to a call regarding the children's mother, her attempt to get money from her mother for her "heroin addiction," and her apparent intoxication under "some type of controlled substance." The Scott Township Police Department report indicated they would be contacting Allegheny County OCYF to report the "horrible living conditions" in the children's home and the mother's statements of "having no money to feed her kids or take care of them anymore." A copy of the January 5, 2012 police report is attached as Exhibit 2.

44. Later that day of January 5, the Scott Township Police contacted OCYF to report the situation and again spoke with Defendant Clair Doe, who indicated she would contact the assigned case worker.

45. The police officer also advised Defendant Clair Doe that Ms. Schaeffer had contacted him to indicate that she had the children and wanted to know what to do.

46. On January 5 or 6, 2012, Ms. Schaeffer spoke with Defendant Leira Felix, who told Ms. Schaeffer that the children's mother was just having some rough times and that it was important for "family" to help her out. Defendant Felix asked Ms. Schaeffer to continue to care for the children, and Ms. Schaeffer agreed.

47. The next day the children's mother texted Ms. Schaeffer and asked her to bring the children home. Ms. Schaeffer drove the children to the mother's home, but she was not there. Later that night the children's mother called Ms. Schaeffer to tell her she was back in St. Clair Hospital, that the utilities in the home were being shut off, and that Allegheny County OCYF was coming to take the kids. The children's mother asked Ms. Schaeffer to keep the children, and Ms. Schaeffer agreed.

48. Shortly thereafter, Ms. Schaeffer spoke to Defendant Felix, who pressed her to continue caring for the children.

49. Defendant Felix arranged to meet with Ms. Schaeffer on January 13 to discuss the children's care, but the day before the meeting, Defendant Felix called Ms. Schaeffer and asked Ms. Schaeffer to keep the children "until mom is well."

50. On the day of the canceled meeting, January 13, Ms. Schaeffer spoke by phone to both Defendants Felix and Noel. She asked them for help in arranging temporary custody and with getting financial support for the four children.

51. Defendant Felix told Ms. Schaeffer that there was no need for OCYF involvement because the children's mother and Ms. Schaeffer had "worked it out."

52. Defendant Noel told Ms. Schaeffer that Allegheny County OCYF only wanted notice when Ms. Schaeffer returned the children to the mother.

53. The next day Ms. Schaeffer took the children to visit their mother, but Ms. Schaeffer left with the children after she saw that there was no food in the home and that water service had been shut off.

54. Having received none of the help she had requested from OCYF, Ms. Schaeffer prepared a Temporary Custody Agreement, which she and the mother signed on January 14.

55. Clearly, OCYF has known during the entire period in question that the four children needed to be, and since January 2012 had been, removed from the parents' custody. More than a year after Ms. Schaeffer had taken custody of the children, in a letter dated March 5, 2013, OCYF advised the Allegheny County Family Division Court that the children's mother had "an extensive history with OCYF," an "extensive history of substance use and abuse," and that "OCYF is not able to determine that she can adequately and safely visit with her children in an unsupervised setting." A copy of the March 5, 2013 letter is attached as Exhibit 3.

56. During the entire period of care, OCYF and the individual Defendants have refused to provide legal, financial or any other support to Ms. Schaeffer and the four children, despite the fact that Ms. Schaeffer has called Allegheny County OCYF every few months to seek assistance, especially financial assistance, for the children's care.

57. Defendant Noel and others have told her that so long as the children are fine there is no need for OCYF involvement.

58. Despite having acknowledged the parents' inability to care for the children, Ms. Schaeffer's willingness to serve as a de facto foster parent, and the signing by Ms. Schaeffer and the mother of a Temporary Custody Agreement, the agency has steadfastly refused all requests for help and support of the four children. Further, Defendants have never advised Ms. Schaeffer of her right to become a foster parent and her right to receive foster care maintenance payments.

FEDERAL AND STATE LAW GOVERNING ALLEGHENY COUNTY'S OBLIGATIONS TO KINSHIP CAREGIVERS

59. A combination of federal and state law regulates Defendants' obligations to provide services and assistance to kinship caregivers, like Ms. Schaeffer.

Federal Law

60. Title IV-E of the Social Security Act, 42 U.S.C. § 672, requires states receiving funds pursuant to that Act to make foster care maintenance payments to foster parents caring for children who have either been removed from the home pursuant to a voluntary placement agreement or a court order, where such children would have been eligible for Aid to Families with Dependent Children (now "Temporary Assistance to Needy Families" or "TANF") in accordance with the state plan. 42 U.S.C. § 672 (a)(1)–(3).

61. Title IV-E of the Social Security Act, 42 U.S.C. § 671(a)(1)–(2), requires a state to designate a state agency to be responsible for administering its foster care maintenance program. In Pennsylvania, the agency responsible for overseeing the administration of the foster care maintenance program, which includes the disbursement of federal funds under Title IV-E of the Social Security Act, is the Pennsylvania Department of Public Welfare. *See* 55 Pa. Code § 3130.12.

62. The Pennsylvania Department of Public Welfare has delegated responsibility for assuring the availability of adequate children and youth services to children who need the services to Pennsylvania's 67 counties, which includes Allegheny County. *See* 55 Pa. Code § 3130.12.

63. Defendant Allegheny County OCYF is the sole authority for certifying a child's eligibility for foster care maintenance payments in Allegheny County. *See* 55 Pa. Code § 3140.111. Once Allegheny County OCYF determines that a child is eligible for foster care maintenance costs, it is responsible for authorizing payment of those costs to the foster parents, including relative foster parents. *See id.*

64. Title IV-E of the Social Security Act, 42 U.S.C. § 675, defines foster care maintenance payments to include "payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, [and] reasonable travel to the child's home for visitation."

65. Title IV-E of the Social Security Act, 42 U.S.C. § 672(c), defines a foster family home as a "home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing."

66. Title IV-E of the Social Security Act, 42 U.S.C. §§ 670–679c, does not distinguish between foster parents who are unrelated to a child placed in their home and those who are kinship caregivers for the purposes of establishing the caregiver's legal right to receive foster care maintenance payments. Indeed, the Act requires states to consider giving preference to adult relatives over unrelated caregivers when determining the placement for a child. 42 U.S.C. § 671 (a)(19).

67. Title IV-E of the Social Security Act, 42 U.S.C. § 671(a)(29), also requires states, within thirty days of a child’s removal from parental custody, to “exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child” that the child has been or is being removed from the custody of the parents. This notice must explain the following:

- (a) the options the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice,
- (b) the requirements to become a foster family home and the additional services and supports available for children placed in such a home, and
- (c) in certain states, like Pennsylvania, the options for entering into a kinship guardianship assistance agreement and receiving assistance payments.

42 U.S.C. § 671(a)(29).

68. In addition, Title IV-E of the Social Security Act requires states to develop an individual plan to place any child receiving foster care assistance payments in a permanent home—either with the parents, an adoptive family, or a legal guardian. In no case may the child remain in temporary substitute care, such as foster care, for over six months without court or administrative review. This review must assess the child’s safety, the continuing need for and appropriateness of the placement, and the likely date by which the child may be returned to the home or placed for adoption or legal guardianship. 42 U.S.C. § 671(a)(16); 42 U.S.C. § 675(5).

69. Under this federal statutory scheme, Pennsylvania receives a portion of its funds for foster care payments, including kinship care payments, from the federal government.

70. On information and belief, the remaining portion of federally-mandated foster care payments is made up of a combination of state and county funds.

State Law

71. Pennsylvania law imposes a duty on the state, and by delegation, on Allegheny County and its OCYF, to ensure the health and well-being of children. *See* 55 Pa. Code § 3130.11. When a child is unsafe at home, OCYF must ensure that the child is placed elsewhere. OCYF can initiate this process by seeking a court order or by asking the parent to sign a voluntary placement agreement. *See* 55 Pa. Code § 3140.111; 55 Pa. Code § 3130.64(b).

72. OCYF has a duty to be diligent in finding a permanent placement for a neglected child either in the home or with another family. “[I]t is the goal of children and youth social services to ensure for each child in this Commonwealth a permanent, legally assured family which protects the child from abuse and neglect.” 55 Pa. Code § 3130.11 (emphasis added). In addition, “[e]ach county is responsible for administering a program [with] . . . [s]ervices to provide a permanent legally assured family for a child in temporary, substitute care who cannot be returned to his own home.” 55 Pa. Code § 3130.12(c).

73. If placement of a child outside the home is necessary to protect the child’s health and safety, OCYF is responsible for seeking a court order which authorizes placement. 55 Pa. Code § 3130.64(b). Pennsylvania regulations define “placement” as “[t]wenty-four hours out-of-home care and supervision of a child.” 55 Pa. Code § 3130.5.

74. Pennsylvania law also requires OCYF, within thirty days of a child’s removal from parental custody, to “exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child” that the child has been or is being removed

from the custody of the parents. 62 Pa. Stat. Ann. § 1303(a.1). This notice must explain the following information:

- (a) the options the relative has under federal and state law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice,
- (b) the requirements to become a foster family home and the additional services and supports that are available for children placed in such a home. *Id.*

75. Once a child is placed in a judicially approved foster care home pursuant to a court order or a voluntary placement agreement, the foster caregiver is entitled to foster care maintenance payments, to be administered by the county agency. 55 Pa. Code § 3140.111.

76. A foster family in Pennsylvania is “[t]he living unit, including the foster family residence and foster parent, approved by a foster family care agency to provide foster family care to children.” 55 Pa. Code § 3700.4.

77. A foster parent in Pennsylvania is “[a]n individual responsible for providing foster family care to children placed by [a Foster Family Care Agency].” Foster family care is defined as “[r]esidential care and supervision provided to a child placed with a foster family.” 55 Pa. Code § 3700.4.

78. State regulations regarding the certification and approval of foster family homes are to be uniformly applied to any adult providing substitute family care for any child considered to be in placement regardless of the relatedness of the caregiver and the child. In accordance with federal law, Pennsylvania law states that “[r]elatives shall receive the same foster care rate as other foster parents if they are complying with the regulations governing foster parents.” 62 Pa. Stat. Ann. § 1303(c).

ALLEGHENY COUNTY HAS A POLICY AND PRACTICE, APPLIED TO MS. SCHAEFFER, OF NOT PROVIDING SERVICES AND SUPPORT TO KINSHIP CAREGIVERS MANDATED BY FEDERAL AND STATE LAW.

79. Despite the clear federal and state law discussed above, and despite learning from law enforcement in 2012 that the children had been abandoned by their parents and left indefinitely with kinship caregivers, Defendant Allegheny County OCYF failed to ensure that the children were safe, develop an individualized plan for the children's well-being, move the children towards a permanency goal, advise Ms. Schaeffer of her rights to become a certified foster parent and to receive the accompanying financial support, or provide her with foster care maintenance payments.

80. Upon information and belief, Defendants' handling of Ms. Schaeffer's case reflects the County's custom, policy and/or practice of handling kinship caregivers.

81. Defendants Marc Cherna and Walter Howard Smith, Jr., have been made aware of Ms. Schaeffer's inability to obtain kinship foster care payments but have failed to advise Ms. Schaeffer of her right to file a complaint with the Pennsylvania Department of Public Welfare or to instruct Allegheny County OCYF to proffer the state and federally mandated payments.

82. On August 4, 2014, counsel for Ms. Schaeffer delivered a letter to Defendants Cherna and Smith, setting forth the history of OCYF's failure to take legally necessary and proper measures to safeguard the children in Ms. Schaeffer's care or to provide Ms. Schaeffer with the required services and financial support. The letter also raised concerns that the County's handling of Ms. Schaeffer's case reflects agency practice and/or policy of handling similar kinship care cases. A copy of the August 4, 2014 letter is attached as Exhibit 4.

83. Defendants Cherna and Smith have declined to provide Ms. Schaeffer with the foster care maintenance payments to which she is entitled by law or to divulge OCYF's policies and procedures with respect to kinship caregivers.

84. Indeed, through counsel, these Defendants have indicated that they see nothing illegal in how Ms. Schaeffer's case was handled, evidencing the fact that OCYF's handling of Ms. Schaeffer's case reflects County custom, practice and/or policy.

85. For over two years, Ms. Schaeffer has borne the full responsibility of providing for the children's well-being. In particular, Ms. Schaeffer has spent her own resources providing for the children's physical needs, including food, clothing, doctor's appointments, and school supplies. Ms. Schaeffer has also incurred substantial legal fees trying to obtain legal custody of the children.

86. On information and belief, all of the children in Ms. Schaeffer's care would have been eligible for state aid (now TANF) at the time they were placed with Ms. Schaeffer, in accordance with 42 U.S.C. § 672(a).

87. Defendants' failure to formally place the children with Ms. Schaeffer, failure to inform Ms. Schaeffer of her rights under federal and state law to receive foster care per diem financial assistance to help with the care of the children, and failure to provide the legally required subsidies has caused Ms. Schaeffer significant financial hardship.

V. CLAIMS

COUNT I: VIOLATION OF TITLE IV-E OF THE SOCIAL SECURITY ACT, 42 U.S.C. §§ 670-679c

88. Plaintiff incorporates herein the allegations set forth in Paras. 1 - 87 of this complaint.

89. Defendants have a duty under Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679c, to exercise due diligence to identify and notify the adult relatives of children removed from their parent's custody of the options under federal and state law to participate in the children's care. This includes the means for becoming certified foster parents and receiving financial assistance to care for the children.

90. Defendants also have a duty under Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679c, to provide foster care maintenance payments to caregivers without regard to their status as kinship caregivers or unrelated caregivers.

91. Defendants failed to notify Ms. Schaeffer of her options under federal law to participate in the children's care and of her ability to receive foster care maintenance payments.

92. Defendants have also failed to provide Ms. Schaeffer with any support in the form of a per diem reimbursement, clothing allowance, or other support for the children in her care.

93. As a result, by their acts and omissions under color of state law described above, Defendants have violated Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679c, the purpose of which is to assure that children removed from the home, either through court order or a voluntary placement agreement, and who are eligible for TANF, are placed in certified foster homes that receive foster care per diem reimbursements to facilitate their care.

94. Ms. Schaeffer is entitled to compensation for such injuries and for the payment of reasonable attorneys' fees, costs, and interest pursuant to 42 U.S.C. § 1983 in an amount to be proven at trial.

**COUNT II: VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION**

95. Plaintiff incorporates herein the allegations set forth in Paras. 1 - 87 of this complaint.

96. Defendants' discriminatory treatment of kinship caregivers in failing to provide them the same services and support as they provide to non-kinship caregivers is not rationally related to advancing any legitimate governmental interest, and thereby violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

97. Ms. Schaeffer is entitled to compensation for such injuries and for the payment of reasonable attorneys' fees, costs, and interest pursuant to § 1983 in an amount to be proven at trial.

COUNT III: VIOLATION OF PENNSYLVANIA LAW

98. Plaintiff incorporates herein the allegations set forth in Paras. 1 - 87 of this complaint.

99. Defendants have a duty under Pennsylvania law to assume the legal responsibility for neglected and abused children in the Commonwealth.

100. Defendants also have a duty under Pennsylvania law to exercise due diligence to identify and notify the adult relatives of children removed from their parent's custody of the options under federal and state law to participate in the children's care. This includes the means for becoming certified foster parents and receiving financial assistance to care for the children.

101. Defendants have a duty under Pennsylvania law to provide foster care maintenance payments to caregivers without regard to their status as kinship caregivers or unrelated caregivers.

102. Defendants have failed to assume the legal responsibility for the four neglected children in Ms. Schaeffer's care.

103. Defendants have failed to notify Ms. Schaeffer of her options under federal and state law to participate in the children's care and of her ability to receive foster care maintenance payments.

104. Defendants have failed to provide Ms. Schaeffer with any support in the form of a per diem reimbursement, clothing allowance, or other support for the children in her care.

105. As a result, Defendants, by their acts and omissions under color of state law described above, including their failure to reimburse Ms. Schaeffer for her care and support of neglected children, have violated their obligations under Pennsylvania law to support the caretakers of neglected and abused children.

106. Ms. Schaeffer is entitled to compensation for such injuries and for the payment of reasonable attorneys' fees, costs, and interest pursuant to state law in an amount to be proven at trial.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- (a) a declaratory judgment that:
 - (i) Defendants' failure to (1) notify Plaintiff of her eligibility for per diem foster care payments and (2) pay any per diem foster care reimbursement or support for the children violates Title IV-E of the Social Security Act, 42 U.S.C. §§ 670–679c, and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution;
 - (ii) Defendants' failure to (1) notify Plaintiff of her eligibility for per diem foster care payments, and (2) pay any per diem foster

care reimbursement or support for the children violates

Pennsylvania law and regulations;

- (b) final injunctive relief prohibiting Defendants from violating federal and state legal requirements to provide kinship caregivers the same level of legal and financial support as they give to non-kin foster parents, including but not limited to giving notice to kinship caregivers of their right to become certified foster parents and the availability of legal and financial support;
- (c) an order that Defendants award Plaintiff compensatory retroactive kinship care payments and other damages attributable to Defendants' violation of federal and state law, plus interest, to the extent eligible;
- (d) attorneys' fees, costs, and expenses; and
- (e) any further relief that this Court deems necessary, proper, and just.

Respectfully submitted,

/s/ Andrew R. Stanton

Andrew R. Stanton, Esquire
PA ID No. 93409
Ngofeen Mputubwele, Esquire
PA ID No. 316649
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, PA 15222
Tel: (412) 355-6583

/s/ Witold J. Walczak (with permission)

Witold J. Walczak, Esquire
PA ID No. 62976
ACLU of Pennsylvania
313 Atwood Street
Pittsburgh, PA 15213
Tel: (412) 681-7864
Attorneys for Plaintiff

Dated: November 19, 2014