

**SIGNING STATEMENT
REGARDING THE MEMORANDUM OF UNDERSTANDING (FISCAL YEAR 2018-19) BETWEEN THE
NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF SOCIAL SERVICES
AND
ROWAN COUNTY**

A signing statement commenting on the written agreement entered into by the above entities pursuant to N.C. Gen. Stat. § 108A-74, an Act of the North Carolina General Assembly

Rowan County shall enter into the Memorandum of Understanding (MOU) as proposed by the North Carolina Department of Health and Human Services to comply with the requirements of N.C. Gen. Stat. § 108A-74. However, Rowan County attaches this Signing Statement as a means of expressing its concerns regarding obstacles to compliance with the terms of the MOU as written.

As defined by Black's Law Dictionary a Memorandum of Understanding is defined as "two or more parties expressing mutual accord on an issue as stated on this type of document." The aforementioned MOU was not developed with the "mutual accord" of the North Carolina Department of Health and Human Services and Rowan County.

This document is binding on our agency yet does not make meaningful allowances for performance standards based on the limitations of resources, impact of systems outside the county's control, and other county specific facts in Rowan County, North Carolina. We believe that additional resources will be necessary to meet the performance standards as outlined and suggest that DHHS look at funding formulas to create equitable resources to counties across the state.

The 2018-19 MOU binds Rowan County to a statewide identical agreement and at the outset of such, Rowan County is aware that it has a limited opportunity for compliance with certain performance standards or other terms of the agreement. As such Rowan County is subjecting itself to particular corrective actions, State intervention and potentially State and Federal funding cuts for issues that are out of its control. Simultaneously, the North Carolina Department of Health and Human Services is agreeing to provide vague and unenforceable support to Rowan County and the other 99 counties.

Rowan County is concerned that the aforementioned MOU is neither a "memorandum of understanding" nor an "agreement" but rather an unconscionable contract as defined by case law in the state of North Carolina.

The North Carolina Supreme Court in *Brenner v. Little Red Sch. House Ltd.*, 302 N.C. 207, 213, 274 S.E.2d 206, 210 (1981) stated that an inquiry into unconscionability requires that a court “consider all the facts and circumstances of a particular case,” and “if the provisions are then viewed as so one-sided that the contracting party is denied any opportunity for a meaningful choice, the contract should be found unconscionable.”

N.C. Gen. Stat. § 108A-74 requires counties to enter into “agreements” with the North Carolina Department of Health and Human Services. The counties have no discretion to refuse to sign. Based upon the requirement to sign and all-encompassing performance standards mandated upon each county without significant changes from that county, a Court may deem this “memorandum of understanding” or “agreement” to be deemed an unconscionable contract as defined by the North Carolina Courts.

There are foreseeable difficulties in meeting some of the mandated performance requirements that are beyond the control of the County. Thus, Rowan County submits the following responses at the outset of this MOU as a way to provide the North Carolina Department of Health and Human Services with notice of the impediments that Rowan County forecasts as well as general commentary regarding the mandated performance requirements:

RESPONSE 1: Initiation of all screened-in child protective services reports– Diligent efforts should be credited to the DSS. Situations outside the Agency’s control regularly occur and include, but are not limited to, children unable to be located due to unknown address, children’s school cannot be identified or children are not present at school, children located out of state or county and other state or county refuses to initiate, parents intentionally hide children from the DSS and while DSS files an interference petition the Court hearing will often be outside of the mandated initiation timeframe.

RESPONSE 2: Repeat child maltreatment – It is very difficult to predict future risk of maltreatment. If the parent has completed all mandated case plans and the Court orders the children to return home, more often than not with the approval of the child’s guardian ad litem, it does not seem fair to hold the Agency accountable for future actions by the parents if all due risk and safety assessments were completed and all services were provided and accomplished. The Rowan County Department of Social Services stands ready to be held accountable for completion of risk and safety assessment and provision of appropriate services. Articulable situations in which it is difficult for the Agency to predict future maltreatment include, but are not limited to, other forms of maltreatment that might occur later different than those identified and treated during the prior DSS involvement and/or new or other caregivers coming into the home following DSS involvement and harming the child.

RESPONSE 3: Several system performance measures require county and state level system collaboration and improvements to successfully meet targets. There are many factors outside

of DSS that affect the mandate to find permanence for youth brought into foster care within 12 months. The current opiate epidemic plagues Rowan County like many others. There are often severe substance abuse issues affecting families. Substance Abuse and Mental Health Services Administration (SAMHSA) defines recovery as a process of change through which individuals improve their health and wellness, live self-directed lives, and strive to reach their full potential. Recovery is a highly individualized process that may involve setbacks. Recovery is built on access to evidence-based clinical treatment and recovery support services for all populations. In Rowan County, we have limited treatment options when the parents are even willing to enter treatment. Further, even in situations where the parents are willing to engage in substance abuse treatment, one (1) year is not a realistic time frame for a full recovery. The lack of easily accessible substance abuse and mental health services is outside of the Rowan County Department of Social Services' control and has a significant impact on the ability to achieve permanency within 12 months. Additional state funding and structure is needed for prevention and treatment.

Another example involves children with severe mental health issues. These children present challenges for placement and care, which limits their permanency options. The current mental health system is not responsive to crises for these children and our county's family foster homes are not appropriately equipped to meet their needs. These children require higher levels of care which are authorized and managed through the mental health system which has no mandate to address permanence.

Further, this performance requirement is inconsistent with achieving a primary permanent plan of Adoption. Adoptions are very rarely, if ever, achieved within a 12 month time period of the child or children coming into custody. Per the Adoption and Safe Families Act a state is required to file a termination of parental rights action once the child or children have been out of the home for 15 of the most recent 22 months. This is inconsistent with the mandated performance requirement of permanency within 12 months.

Finally, the court system in each county has a large impact on the timing of permanency. Limited court dates and various delays in the court hearings are outside of the county's control. The County has very little control over the final disposition dates for cases.

Instead of working with our county "to identify growth targets", we ask DHHS to work with our county to help us provide resources and services to children and parents and families in Rowan County. We ask DHHS to help us "identify growth targets" by giving us tangible resources that we can use to give children permanence within 12 months.

RESPONSE 4 : There are many factors outside of the county’s control that affect the mandate of ensuring foster care placement moves for children do not exceed 4.1% per 1000 days of foster care. Placement moves are often due to behavioral or mental health issues of the children for whom the foster parents are not able or willing to address. This goes back to the mental health system and its failure to adequately treat the mental health needs of the children.

RESPONSE 5: The ability to achieve the given annual percentage of current child support paid and payments towards arrears is also impacted by many factors outside the control of Rowan County. The ability of non-custodial parents to pay their ordered support is dependent upon obtaining and maintaining stable employment, earning a living wage and being willing to meet the obligation. Further, substance abuse, incarceration and pursuit of disability benefits delay the Child Support Agency’s collection efforts. Recently, an appellate court ruled that a judge should not issue an Order for Arrest for a future missed purge payment since the court cannot know whether a civil contemnor had the “present ability” to make the payment at a future date. This ruling will tend to limit the court’s ability to order a series of purge payments beyond one or two months and may cause the Child Support Agency to bring contempt actions more frequently.

Rowan County stands willing and ready to continue to use our best efforts and implement best practices for care and placement to meet the needs of children, families and all citizens of Rowan County, North Carolina. We are willing to abide by all relevant laws, codes, regulations and policies. However, without the ability to individually and specifically negotiate the terms of the aforementioned Memorandum of Understanding Rowan County would be doing a disservice to its clients, the people of Rowan County, North Carolina, by not informing the State and Department of Health and Human Services of the information contained in this Signing Statement. Therefore, we affix our signatures to the Memorandum of Understanding but respectfully attach this Signing Statement.

BY: _____

TITLE:

DATE: _____

BY: _____

TITLE:

DATE: _____