

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A.M., *et al.*,

Plaintiffs,

-against-

John B. Mattingly, in his official capacity as
Commissioner of the New York City Administration
for Children’s Services,

Defendant.

10 CV 2181 (BMC)

STIPULATION AND ORDER
OF SETTLEMENT

WHEREAS, Plaintiffs commenced the instant lawsuit on May 12, 2010, alleging that the Defendant violated federal and state law by improperly retaining Plaintiffs, and a proposed class of Plaintiff children who are in foster care, in acute care psychiatric hospitals;

WHEREAS, on June 10, 2010, the Court so-ordered the parties’ Stipulation and Order for Class Certification certifying the following class:

Children under the age of 18 who are in the custody of the New York City Administration for Children’s Services (“ACS”) and who are currently admitted or will be brought to and admitted to acute psychiatric hospitals and who, once admitted and deemed ready for discharge, are not moved by ACS and/or one of its contract agencies to the least restrictive setting appropriate to their needs; and

WHEREAS, Defendant is implementing a new policy and procedure for the provision of emergency and inpatient mental health services for children in the foster care and child protective system;

WHEREAS, Defendant is implementing a new system for tracking and monitoring children in acute psychiatric hospitals;

WHEREAS, Defendant denies each and every allegation contained in the Complaint;

WHEREAS, no finding of liability has been made;

WHEREAS, the parties desire to resolve the issues that have been raised in this litigation without further proceedings and without admitting fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

DEFINITIONS

1. “Acute care psychiatric hospital”: A municipal or voluntary hospital constituted under Article 31 of the New York Mental Health Law that provides inpatient psychiatric care to children and adolescents under the age of 18 to stabilize psychiatric and behavior crises until such a time when acute potential risk to safety of self or others can be clinically ruled out and follow-up care can be safely carried out at an outpatient or intermediate care facility.
2. “Foster care provider agencies” or “provider agencies”: Agencies authorized pursuant to Social Services Law §371(10)(a) that contract with the Administration for Children’s Services (“ACS” or “Children’s Services”) to provide care to children remanded to, or placed in, the custody of the Commissioner of Children’s Services.
3. “Least restrictive placement” or “least restrictive setting”: Pursuant to 18 N.Y.C.R.R. § 430.11, the most appropriate level of placement will always be considered to be the least restrictive and most homelike setting in which the child can be maintained safely and receive all services in his or her service plan.

4. “MHCU”: The Mental Health Coordination Unit of Children’s Services.
5. “Effective Date”: The date this Stipulation and Order of Settlement (“Stipulation”) is entered as an order of the Court.
6. “Effective Period”: The period of time from the Effective Date until the termination of the Court’s jurisdiction over this action.

DEFENDANT’S OBLIGATIONS

7. As of the Effective Date of this Stipulation, Defendant shall have promulgated the mandatory policy and procedure regarding children in Children’s Services’ care who are admitted to acute care psychiatric hospitals, a copy of which is annexed hereto as Exhibit A.
8. Defendant shall develop, implement, and maintain policies and procedures, consistent with its obligations under state and federal law, including Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Olmstead v. L.C., 527 U.S. 581 (1999), Social Services Law § 398(6)(g)(1), and 18 N.Y.C.R.R. § 430.11, and other federal and state laws regarding the least restrictive placement of children who have been psychiatrically hospitalized, to provide for the timely discharge of children in acute care psychiatric hospitals to the least restrictive setting appropriate to their needs.
9. By December 15, 2010, Defendant shall implement tracking and monitoring for children in acute care psychiatric hospitals using the data collection instruments annexed hereto as Exhibit B, through which the MHCU will track and monitor children in psychiatric hospitals.

10. Beginning January 1, 2011, Defendant shall integrate questions related to case practice with children who experience acute care psychiatric hospitalizations into the Medical Quality Assurance/Quality Improvement (“Medical QA/QI”) tool used in review of provider agencies. Defendant shall share all provider agencies’ Medical QA/QI reports and scores and aggregate data from the MHCU tracking system related to number of hospitalizations and lengths of stay with the Division of Quality Assurance Agency Program Assistance (“APA”) unit Director. If the Division of Quality Assurance APA unit Director determines that the Medical QA/QI review of any foster care agency or the aggregate data from the MHCU tracking system with respect to any provider agency reflects significant or recurring noncompliance with Children’s Services’ policies and procedures regarding children in Children’s Services’ care who are admitted to acute care psychiatric hospitals, Defendant shall require the provider agency to implement a Corrective Action Plan. Defendant shall notify Plaintiffs’ counsel of any such Corrective Action Plan, including the identity of the provider agency, within fourteen (14) days after its approval.
11. Defendant shall develop and conduct training on a regular basis on policies and procedures developed and issued pursuant to paragraphs 7, 8, 9, and 10 above, for provider agencies and appropriate Children’s Services’ staff, including (a) for Children’s Services, Operational Deputy Directors in the Division of Child Protection; (b) for Children’s Services, Office of Placement Administration (“OPA”) managers and OPA staff in the specialized unit; and (c) for provider agencies, foster care program directors, medical and mental health directors,

designated foster care agency MHCU liaisons, and foster care program supervisors. Training materials will include education regarding the prevention of hospitalizations of children and will be made available to Children's Services staff and provider agencies through MHCU technical support and through Children's Services' website. Training for directors and managers will commence in October 2010; ACS will make best efforts to complete training for significant numbers of staff identified in this paragraph by April 30, 2011 and shall complete training for all staff identified in this paragraph by July 1, 2011.

12. Defendant shall provide monitoring to Plaintiffs' counsel as set forth in paragraph 14 below.
13. During the Effective Period of the Stipulation, Defendant shall provide copies of the policies, procedures, data collection instruments, and training materials described in paragraphs 7 through 11 above, and any future changes to these documents, to Plaintiffs' counsel for their review. Regarding changes to policy and/or procedures, Defendant will provide copies to Plaintiffs' counsel at least forty-five (45) days before implementation and Plaintiffs' counsel will have twenty (20) days in which to provide comments. Regarding changes to data collection instruments, Defendant will provide copies to Plaintiffs' counsel at least thirty (30) days before implementation, and Plaintiffs' counsel will have fourteen (14) days in which to provide comments. Regarding training materials, Defendant will provide copies of training materials to Plaintiffs' counsel and shall provide them, when feasible, thirty (30) days in advance of their expected use, and Plaintiffs' counsel will have fourteen (14) days in which to comment.

However, Defendant reserves the right to make changes or updates to a training curriculum without providing notice, in response to feedback from participants or trainers' experience in using a particular training. In such case, copies of the training materials will be provided to Plaintiffs' counsel no later than five (5) business days after the date on which they are first used.

MONITORING

14. By the Effective Date of this Stipulation, Children's Services shall develop reports based on data collected from foster care agencies by the MHCU tracking unit to provide to Plaintiffs' counsel that will consist of the following information:

(a) Monthly reports consisting of the following aggregate information:

(i) Number of children currently hospitalized, and being tracked by MHCU (point-in-time for last day of the reporting period);

(ii) Number of new hospitalizations as of the last day of that month's reporting period; and

(iii) Number of children discharged from a hospital during the reporting period.

(iv) For children discharged from a hospital during the reporting period, the report will also include the following aggregate data:

a. length of stay;

b. the number of children who returned to their previous placement, and the number who had a change of placement;

c. of children with a placement change, the number who remained at the same level of care, moved to a higher level of care, or moved to a lower level of care than their previous placement;

d. number of children referred to the clinical resources (e.g., B2H) prior to discharge and at the time of discharge;

e. barriers to discharge; and

f. the number of children for whom a family team conference was held during the hospitalization.

(v) Number of MHCU-related training sessions provided to Children's Services and foster care agency staff as of the last day of that month's reporting period.

(b) Monthly reports consisting of the following individual case information for each child admitted to or discharged from an acute psychiatric facility during the reporting period:

- (i) Name;
- (ii) Date of Birth;
- (iii) Gender;
- (iv) Case planning agency;

- (v) Hospital that admitted the child;
 - (vi) Date of admission;
 - (vii) Symptoms/behaviors that led to the child being brought to the hospital for assessment;
 - (viii) Diagnoses prior to admission (if available);
 - (ix) Level of placement prior to admission;
 - (x) Date of Discharge (if applicable); and
 - (xi) Level of care to which child was discharged (if applicable).
- (c) During the second year of this Stipulation, reports will be provided on all of the elements listed in paragraphs 14(a) and 14(b) every two months.
- (d) During the third and subsequent years of this Stipulation, reports will be provided on all of the elements listed in paragraphs 14(a) and 14(b) on a quarterly basis.
- (e) Beginning on the Effective Date, all reports listed in paragraph 14 shall be provided to Plaintiffs' counsel within thirty (30) days after the end of the month in which the data is collected.

INDIVIDUAL RELIEF

15. Without diminishing the right of the Plaintiff class to seek enforcement of the provisions of this Stipulation, or of any individual class member to seek relief as set forth in paragraph 21 of this Stipulation, by the Effective Date of the

Stipulation, Defendant shall provide a mechanism pursuant to which Plaintiffs' counsel may bring to the attention of Children's Services individual cases or instances in which there has been an alleged violation of the terms and conditions of this Stipulation. Children's Services shall investigate the case(s), take any appropriate steps required to resolve the issue(s) concerning each individual case, and report the result of such investigation in writing to Plaintiffs' counsel.

JURISDICTION

16. The provisions of this Stipulation shall not take effect unless and until this Stipulation is entered as an order of the Court, at which time it shall become effective. Defendant's obligations under this Stipulation shall run during the Effective Period.
17. Except for the claims of the individually-named Plaintiffs for damages and individual injunctive relief set forth in paragraph 25 below, as of the Effective Date, all remedies sought in the Complaint are limited to the provisions of this Stipulation.
18. The jurisdiction of this Court shall end at the conclusion of sixty (60) months following the Effective Date unless Plaintiffs move for and are granted an extension pursuant to paragraphs 22 and 23 of this Stipulation. At the time of termination of jurisdiction, all rights and claims arising under the provisions of this Stipulation shall terminate and all remaining claims under this Complaint shall be dismissed with prejudice.

ENFORCEMENT

19. In the event of a motion by Plaintiffs for enforcement or contempt based upon Defendant's alleged non-compliance with this Stipulation, Defendant shall be considered to be in compliance with the provisions of this Stipulation unless Plaintiffs establish that Defendant's failures or omissions to comply with the provisions of this Stipulation were not minimal or isolated, but were sufficiently significant or recurring as to be systemic.
20. During the Effective Period, if Plaintiffs' counsel believes that Defendant has failed to comply, as defined by paragraph 19 above, with the provisions of this Stipulation, Plaintiffs' counsel shall notify Defendant's counsel in writing of the nature and specifics of the alleged failure to comply, and shall specify the basis for such belief, including any monitoring reports upon which such a belief is based. Such written notice shall be provided at least thirty (30) days before any motion is made for enforcement of this Stipulation or for contempt. Unless otherwise resolved, the parties' counsel shall meet within this thirty (30) day period following notice to Defendant's counsel in an attempt to arrive at a resolution of the alleged failure to comply.
21. If no resolution is reached within thirty (30) days from the date of notice, Plaintiffs may move this Court for an order enforcing the provisions of this Stipulation and/or for contempt. Plaintiffs shall bear the burden of proving that the alleged noncompliance is sufficiently significant or recurring as to be systemic, as set forth in paragraph 19 above. Non-systemic individual and isolated violations of this Stipulation shall not form a basis for a finding that Defendant has acted in contempt of this Stipulation, or as a basis for a motion for

enforcement. Nothing in this paragraph, however, shall prevent Plaintiffs, when moving for enforcement or contempt of this Stipulation, from seeking individual injunctive relief in this Court on behalf of only those class members whose situations are described to exemplify the noncompliance complained of in the enforcement or contempt motion. No motion for contempt or enforcement shall be brought to remedy those violations that the parties agree (a) have been cured, or (b) will be cured pursuant to a plan agreed upon by the parties. In the event that the parties agree to a plan to cure an alleged violation and Plaintiffs believe that the violation has still not been cured, Plaintiffs must provide at least ten (10) days' notice before any motion is made for enforcement of this Stipulation or for contempt.

EXTENSION OF THE TERM OF THE STIPULATION

22. Plaintiffs may move this Court for an order extending the jurisdiction of the Court over this Stipulation and Order of Settlement by complying with the provisions of paragraphs 20 and 21, and shall make any such motion no later than sixty (60) days before the scheduled termination of this Court's jurisdiction, unless another date is agreed upon by the parties.
23. In the event that Plaintiffs move to extend the jurisdiction of this Court pursuant to paragraph 22 of this Stipulation and Order of Settlement, the standard for measuring Defendant's compliance with the provisions of this Stipulation is that set out in paragraph 19, above, of this Stipulation. Any such extension of the jurisdiction of this Court shall be for a period of not more than one (1) year at a time from the date the Court's jurisdiction was scheduled to terminate. The

Court's jurisdiction shall only be extended over those provisions of this Stipulation that are necessary to correct or prevent violations of federal or state law as to class members.

24. Prior to the expiration of any period of extended jurisdiction set forth in paragraph 22 and 23 of this Stipulation and Order of Settlement, Plaintiffs may move for contempt or enforcement consistent with the provisions set forth in paragraphs 20 and 21 of this Stipulation. Plaintiffs may also move for a further extension of the jurisdiction of the Court beyond any extension granted pursuant to a motion made in accordance with paragraphs 22 and 23 of this Stipulation. No motion for extension of the Court's jurisdiction made pursuant to this paragraph shall be made prior to six months before the expiration of the Court's jurisdiction, and any such motion shall be subject to the provisions for extension of the Court's jurisdiction set forth in paragraphs 22 and 23 of this Stipulation.

NAMED PLAINTIFFS' CLAIMS FOR DAMAGES AND INDIVIDUAL

INJUNCTIVE RELIEF

25. The claims for individual damages brought on behalf of Plaintiffs A.M., M.M., and S.M. will be addressed in a separate stipulation.

GENERAL PROVISIONS

26. Defendant agrees that Plaintiffs are entitled to counsel fees and costs as though they are prevailing parties. The parties agree to attempt to negotiate the amount of such counsel fees and costs. If they are unable to agree on an amount within ninety (90) days of the Effective Date, Plaintiffs may submit an application for

counsel fees and costs to the Court, and Defendant reserves the right to respond to such an application in a manner that is consistent with this paragraph.

27. No provision in this Stipulation and Order of Settlement shall infringe upon any class member's right to seek to compel Defendant to provide any form of relief the class member deems appropriate in the Family Court so long as the class member is not seeking to challenge any of the provisions set forth in this Stipulation.
28. The parties' Protective Order regarding confidential information, entered by the Court on July 2, 2010, shall remain in effect during the Effective Period of this Stipulation.
29. Nothing contained in this Stipulation and Order of Settlement shall be deemed to be a finding or an admission that Defendant has in any manner violated Plaintiffs' rights as contained in the Constitution, Statutes, Ordinances and Rules and Regulations of the United States, the State of New York, or the City of New York.
30. This Stipulation and Order of Settlement shall not be admissible in, nor is it related to, any other proceeding. Nothing in this paragraph, however, shall bar Plaintiffs' counsel from using information or documents obtained in connection with this Stipulation, in any other proceeding in a manner that is consistent with the provisions of the Protective Order entered on July 2, 2010 and otherwise consistent with law.
31. Notwithstanding the provisions of this Stipulation, Defendant reserves the right to implement, change, or otherwise alter or amend the procedures and requirements of this Stipulation if required by intervening changes in federal statute or

regulation or state statute or regulation which are inconsistent with the terms of this Stipulation. Defendant shall provide Plaintiffs' counsel with written notification of a required change at least sixty (60) days prior to the commencement of implementation, unless Defendant is required to commence implementation of such a required change in less than sixty (60) days. If Defendant is required to commence implementation of a required change in less than sixty (60) days, counsel for Defendant shall provide such notice no later than seven (7) working days after learning thereof. Plaintiffs reserve the right to oppose any changes sought by Defendant pursuant to this paragraph.

32. All written notifications sent pursuant to this Stipulation and all other correspondence concerning this Stipulation shall be sent by electronic mail or facsimile to the following addresses, or to such other address as the recipient named below shall specify by notice in writing:

To Plaintiffs' counsel

Tamara A. Steckler
The Legal Aid Society
199 Water Street
New York, NY 10038
tasteckler@legal-aid.org
Fax: (212) 577-3521

Lisa E. Cleary
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036
lecleary@pbwt.com
Fax: (212) 336-2222

To Defendant's counsel

Martha A. Calhoun
D. Alan Rosinus

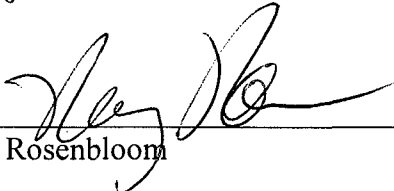
New York City Law Department
100 Church Street
New York, NY 10007
mcalhoun@law.nyc.gov
arosinus@law.nyc.gov
Fax: (212) 788-0877

33. This Stipulation and Order of Settlement is final and binding upon the parties,
their successors and their assigns.

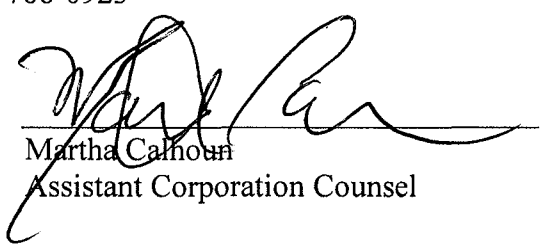
Dated: New York, New York
October 12, 2010

THE LEGAL AID SOCIETY
Steven Banks, Attorney-in-Chief
Kimberly Forte, of counsel
Attorney for Plaintiffs
199 Water Street, 3rd Floor
New York, NY 10038
(212) 577-3300

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant
100 Church Street
New York, New York 10007
(212) 788-0923

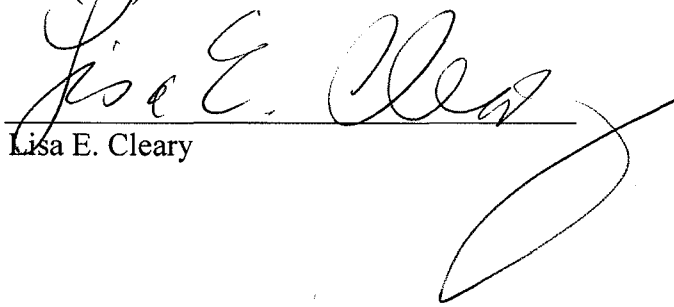
By: 

Nancy Rosenbloom

By: 

Martha Calhoun
Assistant Corporation Counsel

PATTERSON BELKNAP WEBB & TYLER LLP
Attorney for Plaintiffs
1133 Avenue of the Americas
New York, New York 10036-6710
Telephone: (212) 336-2000

By: 

Lisa E. Cleary

IT IS HEREBY ORDERED that:

1. This Stipulation is entered as an order of the Court and thereby takes effects pursuant to paragraph 16.

HON. BRIAN M. COGAN, U.S.D.J.

Dated: _____, 2011