

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART 62

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D.B., E.M., L.R., T.M., ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

STIPULATION AND ORDER
OF SETTLEMENT

-against-

RONALD E. RICHTER in his official capacity
as Commissioner of The New York City
Administration for Children's Services; and
THE CITY OF NEW YORK

Index. No. 402759/11
Justice Wright

Defendants.
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WHEREAS, on October 17, 2011, Plaintiffs' Counsel, on behalf of Plaintiffs, commenced the instant lawsuit by filing a complaint (the "Complaint") against Defendants Ronald E. Richter, in his official capacity as Commissioner of the New York City Administration for Children's Services ("Children's Services" or "ACS") and against the City of New York (together, the "Defendants") in the Supreme Court of New York, County of New York (the "Court"); and

WHEREAS, the Complaint alleges, among other things, that Defendants have violated and are continuing to violate New York State law, regulations, and common law with respect to youth with a permanency goal of another planned permanent living arrangement that includes a significant connection to an adult who is willing to be a permanency resource for the child. In particular, the Complaint alleges that Children's Services, among other things, has repeatedly (1) failed to adequately assist youth in foster care in identifying and securing adequate post-foster care housing; (2) discharged youth from foster care to homelessness or other unsuitable housing

conditions that are not reasonably expected to remain available to them for at least one year after discharge; and (3) failed to supervise youth who are or were in foster care (even those who have been discharged to suitable post-foster care housing) until their 21st birthdays. The Complaint further alleges that, in so doing, Children's Services has violated, among other things, Social Services Law §§ 395, 409-a(5), 398(6)(h); 18 N.Y.C.R.R. §§ 423.2(b)(16), 423.2(c)(2), 430.12(f); and the standards set out by the New York Supreme Court, Appellate Division in Palmer v. Cuomo, 121 A.D. 2d 194 (1st Dept. 1986); and

WHEREAS, the Defendants deny each and every allegation contained in the Complaint;
and

WHEREAS, no finding of liability has been made; and

WHEREAS, the parties desire to resolve the issues raised in the Complaint without further proceedings and without admitting any fault or liability; and

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

I. DEFINITIONS

1) Another Planned Permanent Living Arrangement ("APPLA"): A permanency planning goal to assist youth in foster care in their transition to self-sufficiency by connecting the youth to an adult permanency resource, equipping the youth with life skills and, upon discharge, connecting the youth with any needed community and/or specialized services. See 18 N.Y.C.R.R. § 430.12(f); see also N.Y. Fam. Ct. Act § 1089(c).

2) Effective Date: The Date on which all of the following have occurred:

(a) Approval by the Court of the Settlement, following notice to the Class and a hearing as prescribed by Article 9 of the Civil Practice Law and Rules;

(b) Entry by the Court of the Order and Final Judgment; and

(c) The later of the following events: the date 30 days after entry of an order by the Court granting final approval to the Settlement, if there are no appeals; or, if there is an appeal of the Court's decision granting final approval, the day after all appeals are finally resolved in favor of final approval. In this regard, it is the intention of the Parties that this Settlement shall not become effective until the Court's order approving the Settlement has become completely final, and there is no further recourse by any appellant or objector who seeks to contest the Settlement.

3) Effective Period: The Settlement shall be effective for a period of four (4) years, provided, however, that the obligations under this Stipulation shall not terminate unless and until any timely motion by Plaintiffs for enforcement or for contempt of this Stipulation and Order has been finally resolved and Defendants have complied with any orders related to said motions.

4) Foster Care Provider Agencies or Provider Agencies: Authorized agencies as defined in Social Services Law § 371(10)(a) that contract with Children's Services to provide care to children remanded to, or placed in, the custody of the Commissioner of Children's Services.

5) HSS: The Housing Support Services Unit of Children's Services or any part of Children's Services performing similar functions.

6) The Procedures: The procedures entitled "Housing Services for APPLA Youth," dated August 31, 2011, and "Post Final Discharge Supervision of APPLA+ Youth until 21 Years of Age," dated October 24, 2011, copies of which are annexed hereto as Exhibits A and B, respectively, and along with any amendments, supplementations, or revisions thereto.

II. SCOPE AND EFFECT OF SETTLEMENT AND RELEASE

7) Upon the Effective Date of the Settlement, the Complaint shall be dismissed and the parties' obligations, rights and responsibilities under this Stipulation and this Stipulation's terms

and conditions, shall commence. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the captioned action and any and all claims asserted in the Complaint against all Defendants.

8) Upon the Effective Date of this Settlement, and binding on all Defendants and their successors, members of the Class (as defined below), on behalf of themselves, and their past or present legal representatives shall release and forever discharge, and shall forever be enjoined from prosecuting, any claims asserted in the Complaint against any of the Defendants, subject to paragraphs 9, 21, and 24 through 28 of this Stipulation.

9) No provision in this Stipulation shall infringe upon any youth's right to seek to compel Children's Services to provide any form of relief the youth deems appropriate by way of an individual action or proceeding in New York State Family Court or any other court with jurisdiction over the matter.

III. CLASS CERTIFICATION

10) The parties agree to certification of the Class under Article 9 of the New York Civil Practice Law and Rules.

11) The Class is defined as all children in New York City, (1) who either (a) are currently between 17 and 21 years old, inclusive, and who either currently are in, or formerly were in, the custody of Defendants, or (b) are over 21 years old but remain in foster care pursuant to an exception to policy; and (2) who (a) have been discharged or will be discharged from foster care without a residence other than a shelter for adults, shelter for families, single-room occupancy hotel or any other congregate living arrangement which houses more than 10 unrelated persons and without a reasonable expectation that the residence will remain available to the child for at least the first 12 months after discharge; or (b) have not been provided, are not being provided,

or will not be provided with appropriate assistance, as mandated by New York law, in foster care in identifying and securing adequate post-foster care housing as defined in subsection (2)(a) above; and/or (c) have been finally discharged from foster care, but have not been supervised, consistent with the requirements of New York Social Services law § 398(6)(h) and 18 N.Y.C.R.R. § 430.12(f)(4)(i)(b), until their 21st birthdays.

IV. CHILDREN'S SERVICES' OBLIGATIONS

12) Pursuant to the express terms of this Stipulation, and consistent with its obligations under, inter alia, Social Services Law §§ 395, 409-a(5), 398(6)(h); and 18 N.Y.C.R.R. §§ 423.2(b)(16), 423.2(c)(2), 430.12(f), Children's Services hereby agrees to promulgate adopt, monitor, and enforce the Procedures annexed here to as Exhibits A and B as mandatory policies for the staff of Children's Services and all Foster Care Provider Agencies with whom Children's Services contracts to provide care for children remanded or placed in the custody of the Commissioner of Children's Services. The Procedures shall be promulgated and adopted within fourteen (14) days of the Effective Date of this Stipulation.

13) Except as provided in Paragraph 32, during the Effective Period of this Stipulation, Defendants shall give Plaintiffs' Counsel thirty (30) days notice of any proposed changes to the Procedures, and Plaintiffs' Counsel shall have fourteen (14) days to provide comments.

V. MONITORING

14) Children's Services shall monitor the implementation of the Procedures as described in Paragraphs 6 and 12 by taking, among other things, the following steps:

15) Complying with the related Monitoring Agreement, a copy of which is annexed hereto as Exhibit C.

16) During the Effective Period of this Stipulation, Children's Services shall meet four times

per year with Plaintiffs' Counsel to discuss updates on the implementation and performance of the Procedures, the steps taken by Defendants to monitor the performance of the Foster Care Provider Agencies' and Children's Services' compliance with the Procedures, and any outstanding issues.

VI. TRAINING

17) Children's Services staff shall communicate the provisions set forth in this Stipulation to Children's Services Staff and Provider Agency Staff within thirty (30) days of the Effective Date. Children's Services shall ensure that Children's Services Staff and Provider Agency Staff responsible for implementing the provisions of this Stipulation and the policies annexed hereto receive the training necessary to implement its provisions and policies. Children's Services will provide Plaintiffs' Counsel with a copy of the training materials so that Plaintiffs' Counsel may review the training materials and provide comments on them to Children's Services. Children's Services will provide such materials at least thirty (30) days in advance of the scheduled training, or distribution and Plaintiffs' Counsel will provide any comments at least fourteen (14) days before the scheduled training or distribution. If the same training materials are being used for multiple training sessions, the training materials will only be provided once to Plaintiffs' Counsel. Defendants reserve 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.

18) During the Effective Period of the Stipulation, Children's Services shall provide to Plaintiffs' Counsel:

- (a) the schedule of trainings held during the preceding period by Children's Services

for Foster Care Provider Agency staff regarding services to be provided to all young people in foster care with goals of APPLA, including names and job titles of participants and foster care agency affiliation; and

(b) the number of trainings held during the preceding period by Foster Care Provider Agencies for Provider Agency Staff, including supervisory staff, who work directly with young people with goals of APPLA, and the numbers of attendees.

VII. INDIVIDUAL RELIEF

19) Children's Services shall provide a mechanism to entertain individual complaints, including designating a trained person or persons at Children's Services to whose attention Plaintiffs' Counsel or class members' Family Court attorneys may bring any individual cases in which APPLA youth are allegedly not being assisted in securing housing consistent with the requirements of the Procedures, or, if discharged from foster care, who are not receiving supervision until age 21, who will have the authority to investigate and take actions to resolve problems.

20) If Plaintiffs' Counsel notify Children's Services that an APPLA youth is reaching his or her 21st birthday without having obtained appropriate post-discharge housing consistent with the requirements of the Procedures and New York state law due to an alleged failure of Children's Services or the Provider Agencies to comply with the terms of the Procedures, Children's Services will promptly investigate and may, where appropriate after consideration of all relevant factors, issue an Exception to Policy ("ETP") so as to provide additional time to address the youth's housing situation. Children's Services agrees to notify Plaintiffs' Counsel within ten (10) business days of a determination to grant an ETP following notification by Plaintiffs' Counsel. Children's Services agrees to maintain the young person in foster care while such determination

is pending, should the young person's 21st birthday occur prior to the expiration of the 10 day period.

21) If ACS determines not to issue ETPs, where youth have not obtained appropriate post-discharge housing because of an alleged failure of Children's Services or its Provider Agencies to comply with the terms of the Procedures in sufficient numbers to establish that there may be systemic noncompliance with the Procedures, Plaintiffs may move the Court for enforcement and Defendants may oppose such motion. Nothing herein is intended to establish a right to an ETP under any particular circumstances. If ACS determines to modify or discontinue its policy regarding the granting of ETPs, Plaintiffs may challenge such modification or discontinuance on any grounds and Defendants may oppose such a motion on any grounds including lack of jurisdiction. Plaintiffs must comply with the provisions of paragraphs 25-28 before making any motion described in this paragraph. In the event Plaintiffs prevail on any such motion described in this paragraph, they may move for attorney's fees and costs incurred in connection with making the motion. No motion for enforcement or contempt under this paragraph shall be brought to remedy a violation that the parties agree has been cured or will be cured pursuant to a plan agreed to by the parties.

22) Children's Services agrees to provide the following services to the individual plaintiffs named in the Complaint:

(a) Children's Services has granted an ETP to plaintiff D.B. in order to provide additional time in which to address her housing situation consistent with the requirements of the Procedures attached hereto as Exhibit A;

(b) Children's Services has granted an ETP to plaintiff E.M.. in order to provide additional time in which to address her housing situation consistent with the requirements of the

Procedures attached hereto as Exhibit A;

(c) Children's Services has granted an ETP to plaintiff L.R. in order to provide additional time in which to address her housing situation consistent with the requirements of the Procedures attached hereto as Exhibit A;

(d) Children's Services will provide T.M. with supervision and assist with housing services consistent with the requirements of the Procedure annexed hereto as Exhibit B.

VIII. DURATION OF ORDER AND RETENTION OF JURISDICTION

23) The provisions of this Stipulation shall not take effect until the Effective Date as defined in paragraph 2 above, at which time the Complaint shall be dismissed and the parties' obligations, rights and responsibilities under this Stipulation and this Stipulation's terms and conditions, shall commence. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the captioned action and any and all claims asserted in the Complaint against all Defendants.

24) The Court shall retain jurisdiction over this action during the Effective Period to enforce compliance with this Stipulation. At the end of the Effective Period, all rights and claims arising under the provisions of this Stipulation shall terminate.

IX. DISPUTE RESOLUTION AND ENFORCEMENT

25) The parties shall make good faith efforts to resolve any disputes that may arise under this Stipulation. Children's Services shall respond within thirty (30) days to any written communications from Plaintiffs' Counsel concerning any matter addressed by this Stipulation.

26) In the event of a motion by Plaintiffs for enforcement or for contempt of this Stipulation and Order based upon Defendants' alleged non-compliance with this Stipulation and Order, Defendants shall be considered to be in compliance with the provisions of this Stipulation and

Order unless Plaintiffs establish that Defendants' failures or omissions to comply with the provisions of this Stipulation and Order were not minimal or isolated, but were sufficiently significant or recurring as to be systemic.

27) During the Effective Period, if Plaintiffs' Counsel believes that Defendants have failed to comply, as defined by paragraph 26, above, with the provisions of this Stipulation and Order, Plaintiffs' Counsel shall notify Defendants' 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 or for contempt of this Stipulation and Order. Unless otherwise resolved, the parties' counsel shall meet within this thirty (30) day period following notice to Defendants' counsel in an attempt to arrive at a resolution of the alleged failure to comply.

28) 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 Order 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 26 above. Non-systemic individual and isolated violations of this Stipulation and Order shall not form a basis for a finding that Defendants have acted in contempt of this Stipulation and Order, or as a basis for a motion for enforcement. No motion for enforcement or contempt 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 or contempt of

this Stipulation and Order. 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 those class members whose situations are described to exemplify the non-compliance complained of in the enforcement or contempt motion.

X. ATTORNEYS' FEES

29) Defendants agree that The Legal Aid Society and Lawyers for Children 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 Defendants reserve the right to respond to such an application in a manner that is consistent with this Paragraph.

XI. GENERAL PROVISIONS

30) The parties' will enter into a Protective Order regarding confidential information, which shall be entered by the Court and shall remain in effect during the Effective Period of this Stipulation.

31) Nothing contained in this Stipulation shall be deemed to be a finding or an admission that Defendants have 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.

32) Notwithstanding the provisions of this Stipulation (including, but not limited to, Paragraph 13) Children's Services 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. Children's Services shall provide the Plaintiffs with written notification of a required change at least thirty (30) days prior to the commencement of implementation, unless Children's Services is required to commence implementation of a required change in less than thirty (30) days. If Children's Services is required to commence implementation of a required change in less than thirty (30) days, counsel for Children's Services shall provide such notice no later than seven (7) business days after learning thereof. If Children's Services changes the procedures or requirements of this Stipulation, nothing in this Stipulation shall prohibit the Children's Representatives from moving the Court to contest the changes as not required or permitted by law, and in the event of such a change, the Plaintiffs need not comply with the procedures set forth in Paragraphs 27-28 of this Stipulation.

33) This Stipulation is final and binding upon the parties, their successors and their assigns.

34) This Stipulation will be executed by counsel to the parties to this action, each of whom represents and warrants that he or she has been duly authorized and empowered to execute this Stipulation on behalf of such party, and that it shall be binding on such party in accordance with its terms.

35) This Stipulation will be deemed to have been mutually prepared by the parties and will not be construed against any of them by reason of authorship.

36) Paragraph titles have been inserted for convenience only and will not be used in determining the terms of this Stipulation.

37) All notices and information provided under this Stipulation shall be in writing and shall be mailed or sent by electronic mail with confirmation of receipt, to the below-listed counsel at the addresses identified below.

For Children's Services:
Martha Calhoun

Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007

For The Legal Aid Society:
Karen Fisher Gutheil
199 Water Street
New York, New York 10038

For Lawyers for Children:
Betsy Kramer
110 Lafayette Street, 8th Floor
New York, NY 10013

For Davis Polk & Wardwell LLP:
James W.B. Benkard
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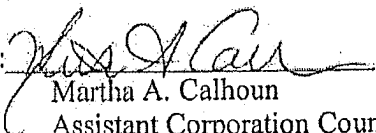
IN WITNESS WHEREOF, the parties have caused this Stipulation, dated November 14, 2011, to be executed, by their duly authorized attorneys.

[Remainder of Page Intentionally Left Blank; Signature Pages to Follow]

Dated: New York, New York

_____, 2011

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By: _____
James W.B. Benkard
Counsel for Plaintiffs

SO ORDERED:

SO ORDERED


GEOFFREY D. WRIGHT
AJSC

The Hon. Geoffrey D. Wright, Justice of the Supreme Court