

**U.S. District Court
Northern District of New York – Main Office (Syracuse) [NextGen CM/ECF
Release 1.3 (Revision 1.3.6)] (Prisoner)
CIVIL DOCKET FOR CASE #: 9:17-cv-00817-DNH-DEP**

A.T. et al v. Harder et al
Assigned to: Judge David N. Hurd
Referred to: Magistrate Judge David E. Peebles
related Case: 9:16-cv-01150-DNH-DEP
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 07/25/2017
Date Terminated: 12/18/2018
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

A. T.

*a minor, by and through his parent and
natural guardian Shakeema Tillman*

represented by **Joshua T. Cotter**
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ATTORNEY TO BE NOTICED

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ATTORNEY TO BE NOTICED

Plaintiff

B. C.

a minor, by and through Kristi Chardo

represented by **Joshua T. Cotter**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

George B. Haddad
(See above for address)
ATTORNEY TO BE NOTICED

Samuel C. Young
(See above for address)
ATTORNEY TO BE NOTICED

Susan M. Young
(See above for address)
ATTORNEY TO BE NOTICED

V.

Mediator (Mandatory Program)

Suzanne Galbato

represented by **Suzanne O. Galbato**
Bond Schoeneck & King, PLLC –
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V.

Defendant

David Harder
*Broome County Sheriff, in his official
capacity*

represented by **Robert G. Behnke**
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Defendant

Mark Smolinsky
*Jail Administrator of the Broome County
Correctional Facility, in his official
capacity*

represented by **Robert G. Behnke**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Kevin Moore
*Deputy Administrator, in his official
capacity*

represented by **Robert G. Behnke**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**Chenango Valley Central School
District**
TERMINATED: 03/07/2018

represented by **Frank W. Miller**
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Christopher M. Militello
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TERMINATED: 10/17/2017

Defendant

Binghamton City School District

TERMINATED: 08/08/2017

Date Filed	#	Docket Text
07/25/2017	<u>1</u>	COMPLAINT against Binghamton City School District, David Harder, Kevin Moore, Mark Smolinsky (Filing fee \$400 receipt number 0206-4079491) filed by A. T., B. C. (Attachments: # <u>1</u> Civil Cover Sheet)(alh,) (Entered: 07/26/2017)
07/26/2017	<u>2</u>	G.O. 25 FILING ORDER ISSUED: Initial Conference set for 10/26/2017 09:30 AM in Syracuse before Magistrate Judge David E. Peebles. Civil Case Management Plan must be filed and Mandatory Disclosures are to be exchanged by the parties on or before 10/19/2017. (Pursuant to Local Rule 26.2, mandatory disclosures are to be exchanged among the parties but are NOT to be filed with the Court.) (alh,) (Entered: 07/26/2017)
07/26/2017	<u>3</u>	Summons Issued as to Binghamton City School District, David Harder, Kevin Moore, Mark Smolinsky. (Attachments: # <u>1</u> Smolinsky, # <u>2</u> Moore, # <u>3</u> Binghamton City School District)(alh,) (Entered: 07/26/2017)
07/27/2017	<u>4</u>	AFFIDAVIT of Service for the Summons, Complaint, and General Order 25 served on David Harder, Mark Smolinsky, and Kevin Moore on 7/27/2017, filed by B. C., A. T.. (Cotter, Joshua) (Entered: 07/27/2017)
07/27/2017	<u>5</u>	AFFIDAVIT of Service for the Summons, Complaint and General Order 25 served on the Binghamton City School District on 7/26/2017, filed by B. C., A. T.. (Cotter, Joshua) (Entered: 07/27/2017)
07/27/2017		Set Deadlines: Binghamton City School District answer due 8/16/2017; David Harder answer due 8/16/2017; Kevin Moore answer due 8/16/2017; Mark Smolinsky answer due 8/16/2017. (alh,) (Entered: 07/27/2017)
08/08/2017	<u>6</u>	STATUS REPORT <i>Informing the Court of the Plaintiffs' Intention to File an Amended Complaint</i> by B. C., A. T.. (Cotter, Joshua) (Entered: 08/08/2017)
08/08/2017	<u>7</u>	AMENDED COMPLAINT against David Harder, Kevin Moore, Mark Smolinsky filed by A. T., B. C.. (Attachments: # <u>1</u> Proposed Summons)(Cotter, Joshua) (Entered: 08/08/2017)
08/08/2017	<u>8</u>	Notice of Related Case by B. C., A. T. submitted to Judge David Hurd . Objections due by 8/15/2017 (Cotter, Joshua) (Entered: 08/08/2017)
08/09/2017	<u>9</u>	Summons Issued as to Chenango Valley Central School District. (alh,) (Entered: 08/09/2017)
08/10/2017	<u>10</u>	AFFIDAVIT of Service for Amended Complaint and Notice of Related Case served on David Harder, Mark Smolinsky and Kevin Moore on 8/9/2017, filed by B. C., A. T.. (Cotter, Joshua) (Entered: 08/10/2017)
08/10/2017	<u>11</u>	AFFIDAVIT of Service for Summons, Amended Complaint, Notice of Related Case and General Order 25 served on Chenango Valley Central School District on 08/10/2017, filed by B. C., A. T.. (Cotter, Joshua) (Entered: 08/10/2017)

08/10/2017		Set Deadline: Chenango Valley Central School District answer due 8/24/2017; Reset Deadlines: David Harder answer due 8/23/2017; Kevin Moore answer due 8/23/2017; Mark Smolinsky answer due 8/23/2017. (alh,) (Entered: 08/10/2017)
08/14/2017	<u>12</u>	RESPONSE TO LETTER BRIEF filed by David Harder, Kevin Moore, Mark Smolinsky as to <u>8</u> Notice of Related Case filed by B. C., A. T. . (Attachments: # <u>1</u> certificate of service)(Behnke, Robert) (Entered: 08/14/2017)
08/23/2017	<u>13</u>	ANSWER to <u>7</u> Amended Complaint by David Harder, Kevin Moore, Mark Smolinsky. (Attachments: # <u>1</u> Certificate of Service)(Behnke, Robert) (Entered: 08/23/2017)
08/23/2017	<u>14</u>	NOTICE of Appearance by Christopher M. Militello on behalf of Chenango Valley Central School District (Militello, Christopher) (Entered: 08/23/2017)
08/23/2017	<u>15</u>	Letter Motion from Christopher Militello, Esq. for Chenango Valley Central School District requesting Extension of deadline to respond to Complaint submitted to Judge Peebles . (Militello, Christopher) (Entered: 08/23/2017)
08/23/2017	<u>16</u>	NOTICE of Appearance by Frank W. Miller on behalf of Chenango Valley Central School District (Miller, Frank) (Entered: 08/23/2017)
08/24/2017	<u>17</u>	TEXT ORDER granting <u>15</u> Letter Request for an extension of time for defendant Chenango Valley Central School District to answer or otherwise respond to plaintiff's <u>7</u> amended complaint on or before 9/30/2017. Authorized by Magistrate Judge David E. Peebles on 8/24/17. (sal) (Entered: 08/24/2017)
08/28/2017	<u>18</u>	DECISION AND ORDER: ORDERED that 1. Plaintiffs' request that this case be designated as related to V.W. v. Conway, 9:16-CV-1150-DNH-DEP is GRANTED; and 2. The Clerk of the Court is directed to reassign this action to the undersigned for all further proceedings. Signed by Judge David N. Hurd on 8/28/17. (alh,) (Entered: 08/28/2017)
08/28/2017		Judge David N. Hurd added. Senior Judge Thomas J. McAvoy no longer assigned to case. (alh,) (Entered: 08/28/2017)
09/20/2017	<u>19</u>	Letter Motion from Christopher Militello, Esq. for Chenango Valley Central School District requesting Extension of deadline to respond to Complaint submitted to Judge Peebles . (Militello, Christopher) (Entered: 09/20/2017)
09/22/2017		TEXT ORDER granting <u>19</u> Letter Request for an extension of time for defendant Chenango Valley Central School District to answer or otherwise respond to plaintiff's amended complaint on or before 10/31/2017. The in person Initial Conference set for 10/26/2017 at 9:30 AM is rescheduled for 11/9/2017 at 10:00 AM in Syracuse, 10th floor, before Magistrate Judge David E. Peebles. The Civil Case Management Plan must be filed and Mandatory Disclosures are to be exchanged by the parties on or before 11/3/2017. (Pursuant to Local Rule 26.2, mandatory disclosures are to be exchanged among the parties but are NOT to be filed with the Court.) Authorized by Magistrate Judge David E. Peebles on 9/22/2017. (Entered: 09/22/2017)
10/17/2017	<u>20</u>	Letter Motion from Frank W. Miller, Esq. for Chenango Valley Central School District requesting removal of Christopher M. Militello, Esq. from electronic filing notices as he is no longer involved in this case submitted to Judge Peebles . (Miller, Frank) (Entered: 10/17/2017)
10/17/2017	<u>21</u>	CERTIFICATE OF SERVICE by Chenango Valley Central School District re <u>20</u> Letter Motion from Frank W. Miller, Esq. for Chenango Valley Central School District requesting removal of Christopher M. Militello, Esq. from electronic filing notices as he is no longer involved in this case submitted to Judge Peebles (Miller, Frank) (Entered: 10/17/2017)
10/17/2017	<u>22</u>	TEXT ORDER granting <u>20</u> Letter Request to remove Christopher M Militello, Esq. as counsel for the defendant Chenango Valley Central School District in this action. Authorized by Magistrate Judge David E. Peebles on 10/17/2017. (sal) (Entered: 10/17/2017)
11/01/2017	<u>23</u>	Letter Motion from Frank W. Miller, Esq. for Chenango Valley Central School District requesting extension of time to serve Answer submitted to Judge Peebles . (Miller, Frank) (Entered: 11/01/2017)

11/03/2017	24	TEXT ORDER granting <u>23</u> Letter Request. The time for defendant Chenango Valley Central School District to answer or otherwise respond to plaintiff's complaint is extended until 12/1/2017. The in person Rule 16 Conference remains scheduled for 11/9/2017 at 10:00 AM in Syracuse, 10th floor, before Magistrate Judge David E. Peebles. Parties are reminded to file a Civil Case Management Plan in preparation of this conference and the deadline for filing this document has been extended until 11/7/2017. Authorized by Magistrate Judge David E. Peebles on 11/3/2017. (sal,) (Entered: 11/03/2017)
11/07/2017	<u>25</u>	CIVIL CASE MANAGEMENT PLAN by B. C., A. T.. (Cotter, Joshua) (Entered: 11/07/2017)
11/09/2017		TEXT Minute Entry for proceedings held before Magistrate Judge David E. Peebles: Initial Pretrial Conference held on 11/9/2017. Mandatory disclosures will be exchanged by 12/8/2017. Plaintiffs' counsel intends to file a class certification motion by 12/1/2017, as well as a motion for preliminary injunction some time in December. Expert retention is anticipated. Case is placed into the Mandatory Mediation Program. The deadline for completion of Mandatory Mediation is 1/31/2018. Joinder and amendment deadlines are set for 6/1/2018. Completion of Fact Discovery is due by 8/31/2018. Initial expert reports are due by 9/6/2018. Responsive expert reports are due by 9/20/2018. Rebuttal expert reports are due by 10/11/2018. Completion of all Discovery, including expert depositions, is due by 11/30/2018. Dispositive motions must be filed by 1/18/2019. Next telephone conference is set for 2/15/2018 at 3:30 PM. Plaintiff's counsel is directed to initiate the call to Chambers. APP: Joshua Cotter, Esq., Samuel Young, Esq., Susan Young, Esq., Robert Behnke, Esq., and Charles Spagnoli, Esq.. (sal) (Entered: 11/09/2017)
11/09/2017		Set Hearings: A Telephone Conference is set for 2/15/2018 at 3:30 PM before Magistrate Judge David E. Peebles. Plaintiffs' counsel is directed to initiate the call to Chambers, which can be reached at (315) 234-8620. (sal) (Entered: 11/09/2017)
11/09/2017	<u>26</u>	ORDER REFERRING CASE to Mandatory Mediation. The deadline for Mediator Selection is 12/7/2017. The deadline for completion of Mandatory Mediation is 1/31/2018. Signed by Magistrate Judge David E. Peebles on 11/9/2017. (sal) (Entered: 11/09/2017)
11/09/2017	<u>27</u>	UNIFORM PRETRIAL SCHEDULING ORDER: Anticipated length of bench trial: 4-6 days. Preferred Trial Location: Utica. The deadline for completion of Mandatory Mediation is 1/31/2018. Joinder of Parties due by 6/1/2018. Amended Pleadings due by 6/1/2018. Completion of Fact Discovery due by 8/31/2018. Initial expert reports are due by 9/6/2018. Responsive expert reports are due by 9/20/2018. Rebuttal expert reports are due by 10/11/2018. All Discovery, including Expert Depositions, is due by 11/30/2018. Dispositive Motions must be filed by 1/18/2019. PLEASE SEE ATTACHED ADDENDUM REGARDING REQUESTS FOR EXTENSIONS OF TIME. Signed by Magistrate Judge David E. Peebles on 11/9/2017. (Attachments: # <u>1</u> Addendum)(sal) (Entered: 11/09/2017)
12/01/2017	<u>28</u>	Letter Motion from Frank W. Miller, Esq. for Chenango Valley Central School District requesting extension of time to serve Answer and Rule 26 Disclosures submitted to Judge Peebles . (Miller, Frank) (Entered: 12/01/2017)
12/01/2017	<u>29</u>	CERTIFICATE OF SERVICE by Chenango Valley Central School District re <u>28</u> Letter Motion from Frank W. Miller, Esq. for Chenango Valley Central School District requesting extension of time to serve Answer and Rule 26 Disclosures submitted to Judge Peebles (Miller, Frank) (Entered: 12/01/2017)
12/01/2017	30	TEXT ORDER granting <u>28</u> Letter Request by Defendant Chenango Valley Central School District for an extension of time until 1/2/2018 to answer plaintiff's complaint and serve its Rule 26 Disclosures. Authorized by Magistrate Judge David E. Peebles on 12/1/2017. (sal) (Entered: 12/01/2017)
01/02/2018	<u>31</u>	Letter Motion from Frank W. Miller, Esq. for Chenango Valley Central School District requesting an extension of time to serve our answer submitted to Judge David E. Peebles . (Miller, Frank) (Entered: 01/02/2018)
01/03/2018	32	TEXT ORDER granting <u>31</u> Letter Request for defendant Chenango Valley Central School District to answer or otherwise respond to plaintiff's amended complaint on or before 2/2/2018. Authorized by Magistrate Judge David E. Peebles on 1/3/18. (sal)

		(Entered: 01/03/2018)
01/03/2018	<u>33</u>	MOTION to Certify Class Motion Hearing set for 2/9/2018 10:00 AM in Utica before Judge David N. Hurd Response to Motion due by 1/23/2018 Reply to Response to Motion due by 1/29/2018. filed by B. C., A. T.. (Attachments: # <u>1</u> Declaration of Joshua Cotter, # <u>2</u> Exhibit(s) 1–6 of the Declaration of Joshua Cotter, # <u>3</u> Exhibit(s) 7–12 of the Declaration of Joshua Cotter, # <u>4</u> Exhibit(s) 13–22 of the Declaration of Joshua Cotter, # <u>5</u> Exhibit(s) Exhibits 23–25 of the Declaration of Joshua Cotter, # <u>6</u> Exhibit(s) 26–27 of the Declaration of Joshua Cotter, # <u>7</u> Exhibit(s) 28–31 of the Declaration of Joshua Cotter, # <u>8</u> Memorandum of Law) (Cotter, Joshua) (Entered: 01/03/2018)
01/23/2018	<u>34</u>	AFFIDAVIT in Opposition re <u>33</u> MOTION to Certify Class filed by David Harder, Kevin Moore, Mark Smolinsky. (Attachments: # <u>1</u> Exhibit(s) A CJ Discipline File, # <u>2</u> Exhibit(s) B Age Specific Diet for Juveniles, # <u>3</u> Exhibit(s) C AT Discipline File, # <u>4</u> Exhibit(s) E BC Discipline File, # <u>5</u> Exhibit(s) F DK Discipline File, # <u>6</u> Exhibit(s) G OC Discipline File, # <u>7</u> Memorandum of Law, # <u>8</u> Certificate of Service)(Behnke, Robert) (Entered: 01/23/2018)
01/23/2018	<u>35</u>	Medical Records filed by David Harder, Kevin Moore, Mark Smolinsky. (Behnke, Robert) (Entered: 01/23/2018)
01/29/2018	<u>36</u>	Letter Motion from Plaintiffs' Counsel for B. C., A. T. requesting Permission to File a Reply to the Sheriff's Office Defendants' Opposition to Plaintiffs' Motion for Class Certification submitted to Judge David Hurd . (Cotter, Joshua) (Entered: 01/29/2018)
01/29/2018	<u>37</u>	REPLY to Response to Motion re <u>33</u> MOTION to Certify Class filed by B. C., A. T.. (Attachments: # <u>1</u> Declaration Supplementing Joshua Cotter's Initial Declaration, # <u>2</u> Exhibit(s) 1–2 of Supplemental Declaration of Joshua Cotter)(Cotter, Joshua) (Entered: 01/29/2018)
01/29/2018	<u>38</u>	Medical Records filed by B. C., A. T.. (Cotter, Joshua) (Entered: 01/29/2018)
01/30/2018	39	TEXT ORDER: Plaintiffs' <u>36</u> Letter Motion requesting permission to file their <u>37</u> Reply and <u>38</u> Medical Records to defendants' <u>33</u> Response in opposition to the plaintiffs' <u>33</u> Motion to Certify Class is GRANTED and accepted for the Court's consideration. The Motion to Certify Class is fully briefed, no further submissions will be accepted for filing. Authorized by Judge David N. Hurd on 1/30/18. (alh,) (Entered: 01/30/2018)
01/31/2018	40	STIPULATION SELECTING MEDIATOR: IT IS HEREBY STIPULATED AND AGREED that Suzanne Galbato has been selected, contacted and has agreed to serve as Mediator for this action. IT IS FURTHER STIPULATED AND AGREED, that counsel will participate in the mediation session in good faith and confer with the Mediator regarding the scheduling of additional conferences, bearing in mind the deadline for completion of Mediation set forth in the Court's Order Referring the Case to Mediation. Stipulation signed by: Joshua Cotter and Robert Behnke. Dated: 1/31/18(Cotter, Joshua) (Entered: 01/31/2018)
01/31/2018	<u>41</u>	Letter Motion from Plaintiffs' Counsel for B. C., A. T. requesting an Exstension of the Deadline to Complete Mediation submitted to Judge Peebles . (Cotter, Joshua) (Entered: 01/31/2018)
01/31/2018	42	TEXT ORDER granting <u>41</u> Letter Request. The parties have selected a mediator and the Mandatory Mediation is currently scheduled for 2/13/2018, therefore, the deadline for completion of Mandatory Mediation is extended until 2/13/2018.Authorized by Magistrate Judge David E. Peebles on 1/31/2018. (sal) (Entered: 01/31/2018)
01/31/2018	<u>43</u>	Letter Motion from Robert G. Behnke for David Harder, Kevin Moore, Mark Smolinsky requesting rescheduling of status conference submitted to Judge Peebles . (Behnke, Robert) (Entered: 01/31/2018)
01/31/2018	44	TEXT ORDER granting <u>43</u> Letter Request. The Telephone Conference set for 2/15/2018 at 3:30 PM is rescheduled for 3/15/2018 at 10:00 AM before Magistrate Judge David E. Peebles. Plaintiffs' counsel is directed to initiate the call to Chambers, which can be reached at (315) 234–8620. Authorized by Magistrate Judge David E. Peebles on 1/31/18. (sal) (Entered: 01/31/2018)

02/06/2018	<u>45</u>	MOTION for Preliminary Injunction Motion Hearing set for 3/9/2018 10:00 AM in Utica before Judge David N. Hurd Response to Motion due by 2/20/2018 Reply to Response to Motion due by 2/26/2018. filed by B. C., A. T.. (Attachments: # <u>1</u> Declaration of Joshua Cotter, # <u>2</u> Exhibit(s) 1–6 of the Cotter Declaration, # <u>3</u> Exhibit(s) 7–12 of the Cotter Declaration, # <u>4</u> Exhibit(s) 13–17 of the Cotter Declaration, # <u>5</u> Exhibit(s) 18–20 of the Cotter Declaration, # <u>6</u> Exhibit(s) 21–22 of the Cotter Declaration, # <u>7</u> Exhibit(s) 23–25 of the Cotter Declaration, # <u>8</u> Exhibit(s) 26 of the Cotter Declaration, # <u>9</u> Exhibit(s) 27 of the Cotter Declaration, # <u>10</u> Exhibit(s) 28–35 of the Cotter Declaration, # <u>11</u> Exhibit(s) 36–38 of the Cotter Declaration, # <u>12</u> Exhibit(s) 40–44 of the Cotter Declaration, # <u>13</u> Exhibit(s) 45–47 of the Cotter Declaration, # <u>14</u> Declaration of Jami Waldron, # <u>15</u> Exhibit(s) A–B of the Waldron Declaration, # <u>16</u> Declaration of Andrea Weisman PhD., # <u>17</u> Exhibit(s) A–B of the Weisman Declaration, # <u>18</u> Memorandum of Law) (Cotter, Joshua) (Entered: 02/06/2018)
02/06/2018	<u>46</u>	Medical Records filed by B. C., A. T.. (Cotter, Joshua) (Entered: 02/06/2018)
02/07/2018	<u>47</u>	Letter Motion from Frank W. Miller, Esq. for Chenango Valley Central School District requesting Approval of Settlement Agreement submitted to Judge Hurd . (Miller, Frank) (Entered: 02/07/2018)
02/07/2018	<u>48</u>	Letter Motion from Robert G. Behnke for David Harder, Kevin Moore, Mark Smolinsky requesting adjournment of motion submitted to Judge Hurd . (Behnke, Robert) (Entered: 02/07/2018)
02/08/2018	<u>49</u>	RESPONSE TO LETTER BRIEF filed by B. C., A. T. as to <u>48</u> Letter Request/Motion filed by David Harder, Kevin Moore, Mark Smolinsky . (Cotter, Joshua) (Entered: 02/08/2018)
02/08/2018	50	TEXT ORDER GRANTING ADJOURNMENT OF MOTIONS: Granting <u>48</u> Letter Motion from Robert G, Behnke, Esq. regarding extension of time to respond to plaintiffs' motion for preliminary injunction. Pursuant to the verbal Order of the Hon. David N. Hurd, <u>45</u> MOTION for Preliminary Injunction, is adjourned and the motion response and reply dates are reset as follows; Defendants' Response to the Motion is now due by 5:00pm on MARCH 5, 2018 and Plaintiffs' Reply to the Response to the Motion, if any, is now due by 5:00pm on MARCH 12, 2018. Oral argument as to all motions that have been filed in this matter : <u>33</u> MOTION to Certify Class , <u>47</u> Letter Motion from Frank W. Miller, Esq. for Chenango Valley Central School District requesting Approval of Settlement Agreement submitted to Judge Hurd , <u>45</u> MOTION for Preliminary Injunction shall be heard and are NOW set for Friday, MARCH 23, 2018 at 10:00AM in USDC / Utica, NY. Appearances required in Court in Utica. Please adjust your calendars accordingly. So Ordered by Judge David N. Hurd on 2/8/2018. (ptm) (Entered: 02/08/2018)
02/09/2018	<u>51</u>	ORDER regarding <u>47</u> Letter Motion: The Court accepts the Settlement Agreement. Signed by Judge David N. Hurd on 2/9/18. (alh,) (Entered: 02/09/2018)
02/09/2018	<u>52</u>	STIPULATION AND ORDER FOR INTERIM SETTLEMENT AGREEMENT. Signed by Judge David N. Hurd on 2/9/18. (alh,) (Entered: 02/09/2018)
02/09/2018	<u>53</u>	ORDER: ORDERED that: (1) The action against the School District is DISMISSED except for the following; (2) the attorneys' fee issue between the plaintiffs and School District remains to be resolved; (3) plaintiffs and the School District shall settle the attorneys' fee issue on or before March 9, 2018 and notify the Court of the results; (4) In the event that no settlement is reached, plaintiffs shall file an application for attorneys' fees on or before March 23, 2018; (5) the School District shall answer the application on or before April 6, 2018; (6) plaintiffs may file a reply on or before April 13, 2018; and (7) the decision regarding attorneys' fees shall be binding upon the plaintiffs and the School District. Signed by Judge David N. Hurd on 2/9/18. (alh,) (Entered: 02/09/2018)
02/16/2018	54	REPORT OF MANDATORY MEDIATION – A Mandatory Mediation session was held on 2/13/2018. Total Hours Spent by Mediator: 6; The outcome of Mandatory Mediation is: MEDIATION WAS INCONCLUSIVE. Another Mediation session has been scheduled. (Galbato, Suzanne) (Entered: 02/16/2018)

02/16/2018	<u>55</u>	NOTICE of Appearance by George B. Haddad on behalf of All Plaintiffs (Haddad, George) (Main Document 55 replaced on 2/16/2018) (alh,). (Entered: 02/16/2018)
02/16/2018		CLERK'S CORRECTION OF DOCKET ENTRY re <u>55</u> Notice of Appearance: Clerk has replaced image with non-modifiable image. (alh,) (Entered: 02/16/2018)
02/16/2018	<u>56</u>	Letter Motion from Suzanne O. Galbato for Suzanne Galbato requesting that the mediation period be held open submitted to Judge Peebles . (Galbato, Suzanne) (Entered: 02/16/2018)
02/20/2018	57	TEXT ORDER granting <u>56</u> Letter Request. The parties have advised that court that they will continue to negotiate settlement. The deadline for completion of Mandatory Mediation is therefore stayed until further order of the court. Authorized by Magistrate Judge David E. Peebles on 2/20/2018. (sal) (Entered: 02/20/2018)
03/05/2018	<u>58</u>	Letter Motion from Frank W. Miller, Esq. for Chenango Valley Central School District requesting Approval of Settlement Agreement submitted to Judge Hurd . (Miller, Frank) (Entered: 03/05/2018)
03/05/2018	<u>59</u>	RESPONSE in Opposition re <u>45</u> MOTION for Preliminary Injunction filed by David Harder, Kevin Moore, Mark Smolinsky. (Attachments: # <u>1</u> Affidavit of Sean Bell, # <u>2</u> Affidavit of James Borchardt, # <u>3</u> Affidavit of Marcus DeAngelo, # <u>4</u> Affidavit of Jeff Katen, # <u>5</u> Affidavit of Jason Kirk, # <u>6</u> Affidavit of Dennis Rowe, # <u>7</u> Affidavit of Daniel Snyder, # <u>8</u> Affidavit of Jennifer Vasquez, # <u>9</u> Affidavit of Adam Wilcox, # <u>10</u> Exhibit(s) A–New Regulation on Inmate Confinement, # <u>11</u> Exhibit(s) B–Commission of Correction Report, # <u>12</u> Exhibit(s) C– NCCHC Accreditation Report, # <u>13</u> Memorandum of Law, # <u>14</u> Certificate of Service)(Behnke, Robert) (Entered: 03/05/2018)
03/06/2018	<u>60</u>	STIPULATION AND ORDER ON ATTORNEYS' FEES AND COSTS. Signed by Judge David N. Hurd on 3/6/18. (alh,) (Entered: 03/06/2018)
03/12/2018	<u>61</u>	REPLY to Response to Motion re <u>45</u> MOTION for Preliminary Injunction filed by B. C., A. T.. (Cotter, Joshua) (Entered: 03/12/2018)
03/15/2018		TEXT Minute Entry for proceedings held before Magistrate Judge David E. Peebles: Telephone Conference held on 3/15/2018. Preliminary injunction and class certification motions are pending before District Judge Hurd and oral argument is currently set for 3/23/2018. Preliminary discovery has been exchanged and document demands will be served by each side shortly. Parties anticipate retaining experts. A mandatory mediation session was held, however, the case could not be resolved. Magistrate Judge Peebles discusses settlement with the parties and will be kept as an open issue. Next telephone conference is set for 6/14/2018 at 3:00 PM. Defendants' counsel is directed to initiate the call to Chambers. APP: Joshua Cotter, Esq., and Robert Behnke, Esq.. (sal) (Entered: 03/15/2018)
03/15/2018		Set Hearings: A Telephone Conference is set for 6/14/2018 at 3:00 PM before Magistrate Judge David E. Peebles. Defendants' counsel is directed to initiate the call to Chambers, which can be reached at (315) 234–8620. (sal) (Entered: 03/15/2018)
03/23/2018		TEXT Minute Entry for proceedings held before Judge David N. Hurd in Utica, NY. Motion Hearing held on 3/23/2018. Judge Hurd hears argument as to <u>33</u> MOTION to Certify Class filed by B. C., A. T., and <u>45</u> MOTION for Preliminary Injunction filed by B. C., A. T. and RESERVES DECISION with written opinion to follow. Appearances: Joshua T. Cotter, Esq., Samuel C. Young, Esq., and Susan M. Young, Esq. for plaintiffs A.T. and B. C. Robert G. Behnke, Esq., and Jennifer L. Suwak, Esq. for defendants David Harder, Mark Smolinsky, Kevin Moore. (10:00 – 10:45)(Court Reporter Nancy Freddoso) (ptm) (Entered: 03/23/2018)
04/04/2018	<u>62</u>	MEMORANDUM–DECISION AND ORDER: ORDERED that 1. Plaintiffs' <u>33</u> motion for class certification is GRANTED; 2. Plaintiffs' <u>45</u> motion for a preliminary injunction is GRANTED; 3. The official–capacity claim against Deputy Administrator Moore is DISMISSED without prejudice; 4. Defendants, their agents, servants, employees, and officers, and all other persons in active concert or participation with them and who receive actual notice of this preliminary injunction, by personal service or otherwise, are hereby IMMEDIATELY ENJOINED AND RESTRAINED, pending the final determination of this action, from imposing 23–hour disciplinary isolation on juveniles at the Broome County Jail; 5. Defendants shall IMMEDIATELY only lock

		<p>juveniles in their cells for disciplinary purposes if the juvenile poses an immediate threat to the safety or security of the facility and only after less restrictive measures have been employed and found inadequate to address the particular threat at issue; 6. Under no circumstances shall a juvenile be locked in their cell for greater than four hours for disciplinary purposes; 7. If a juvenile remains an immediate threat to the safety and security of the facility after four hours, a psychiatrist shall be consulted and a plan put in place to ensure the juvenile's safe return to the general juvenile population; 8. Defendants shall IMMEDIATELY ensure all juveniles have access to at least three hours of educational instruction each day as well as any IDEA-mandated special education and related services; and 9. If a juvenile with a mental health or intellectual disability will potentially lose access to the benefits, services, and programs offered at the facility as a result of the disciplinary process, defendants shall ensure mental health staff will perform an individualized assessment of the juvenile as soon as possible. This assessment shall at minimum include: (a) a review of the individual's mental health needs; (b) a determination regarding whether any reasonable modifications can be made to eliminate future risk; (c) a determination regarding whether the individual with a disability continues to pose a risk; and (d) whether placement in segregation is medically appropriate. Signed by Judge David N. Hurd on 4/4/18. (alh,) (Entered: 04/04/2018)</p>
05/02/2018	<u>63</u>	<p>Letter Motion from Plaintiffs' Counsel for B. C., A. T. requesting a Settlement Conference submitted to Judge Peebles . (Cotter, Joshua) (Entered: 05/02/2018)</p>
05/03/2018	64	<p>TEXT ORDER granting <u>63</u> Letter Request. A Settlement Conference is set for 5/10/2018 at 9:30 AM in Syracuse, 10th floor, before Magistrate Judge David E. Peebles. At that conference the parties are directed to appear in person, through counsel and, unless specifically excused by the court prior to the time of the conference, by a representative of the party with full authority to enter into binding agreements on behalf of that party in connection with this litigation. In preparation for the scheduled settlement conference, not later than <u>5/8/2018</u>, the parties shall submit directly to Judge Peebles' chambers a short, concise statement setting forth the material facts of the case, together with an indication of which if any are disputed; providing a synopsis of the parties' respective legal positions concerning any issues presented in the case; and outlining any settlement discussions which have occurred. This can be done by facsimile at (315) 234-8621 or e-mail at NYND_DEP_ECF_NOTICES@nynd.uscourts.gov. That confidential statement, which shall not be filed with the court clerk and need not be served upon opposing counsel, should also include an assessment of the strength and weaknesses of the party's position in the case together with a candid indication of the party's settlement position. Authorized by Magistrate Judge David E. Peebles on 5/3/2018. (sal) (Entered: 05/03/2018)</p>
05/03/2018	65	<p>TEXT ORDER : In light of the Settlement Conference set for 5/10/2018, the status telephone conference set for 6/14/2018 at 3:00 PM is adjourned without date at this time. Authorized by Magistrate Judge David E. Peebles on 5/3/2018. (sal) (Entered: 05/03/2018)</p>
05/10/2018		<p>TEXT Minute Entry for proceedings held before Magistrate Judge David E. Peebles: Settlement Conference held on 5/10/2018. Parties discuss the outstanding issues concerning the settlement terms with Magistrate Judge Peebles. Parties will discuss further and exchange settlement documents within the next couple of weeks. Attorneys' fees issue remains outstanding and the parties will negotiate further in hopes of resolving. A telephone conference is set for 5/30/2018 at 3:00 PM. Plaintiffs' counsel is directed to initiate the call to Chambers. APP: Joshua Cotter, Esq., Samuel Young, Esq., and Susan Young, Esq. for Plaintiffs. Robert Behnke, Esq., Jennfer Suwak, Esq., Mark Smolinsky, and David Harder for Defts.. (sal) (Entered: 05/10/2018)</p>
05/10/2018		<p>Set Hearings: A Telephone Conference is set for 5/30/2018 at 3:00 PM before Magistrate Judge David E. Peebles. Plaintiffs' counsel is directed to initiate the call to Chambers, which can be reached at (315) 234-8620. (sal) (Entered: 05/10/2018)</p>
05/30/2018		<p>TEXT Minute Entry for proceedings held before Magistrate Judge David E. Peebles: Telephone Conference held on 5/30/2018. An updated proposed settlement agreement is being circulated among the parties. The terms are currently being negotiated. Magistrate Judge Peebles directs the parties to file a Status Report, on or before</p>

		6/29/2018, indicating whether attorney's fees will be left as an open issue or it is resolved. APP: Joshua Cotter, Esq., Susan Young, Esq., Robert Behnke, Esq., and Mark Smolinsky. (sal) (Entered: 05/31/2018)
05/31/2018	66	TEXT ORDER : The parties are directed to file a Status Report, on or before 6/29/2018, indicating whether attorney's fees will be left as an open issue or it is resolved. Authorized by Magistrate Judge David E. Peebles on 5/31/2018. (sal) (Entered: 05/31/2018)
06/28/2018	<u>67</u>	STATUS REPORT by B. C., A. T.. (Cotter, Joshua) (Entered: 06/28/2018)
06/29/2018	68	TEXT ORDER : The parties are directed to file a Status Report, on or before 8/31/2018, indicating whether attorney's fees will be left as an open issue or it is resolved. Authorized by Magistrate Judge David E. Peebles on 6/29/2018. (sal) (Entered: 06/29/2018)
07/09/2018	<u>69</u>	Joint MOTION Preliminary Approval of Class Settlement , <i>Approval of Notice of Settlement</i> filed by B. C., A. T.. (Attachments: # <u>1</u> Exhibit(s) 1 to Notice of Motion: Signed Stipulation, # <u>2</u> Proposed Order/Judgment Preliminarily approving Settlement, # <u>3</u> Memorandum of Law, # <u>4</u> Declaration of Joshua Cotter in support of Joint Motion, # <u>5</u> Exhibit(s) A and B to Cotter Declaration) Motions referred to David E. Peebles. (Cotter, Joshua) (Entered: 07/09/2018)
08/07/2018	<u>70</u>	STATUS REPORT <i>Regarding Attorneys' Fees</i> by B. C., A. T.. (Cotter, Joshua) (Entered: 08/07/2018)
10/16/2018	<u>71</u>	ORDER GRANTING THE PARTIES' JOINT <u>69</u> MOTION FOR (1) PRELIMINARY APPROVAL OF CLASS-ACTION SETTLEMENT, AND (2) APPROVAL AND DISTRIBUTION OF THE NOTICE OF SETTLEMENT. Fairness Hearing will be held before Judge Hurd on 12/18/18 at 1:00 pm. Signed by Judge David N. Hurd on 10/15/18. (nas) (Entered: 10/16/2018)
10/16/2018		Fairness Hearing set for 12/18/2018 01:00 PM in Utica before Judge David N. Hurd. (nas,) (Entered: 10/16/2018)
10/30/2018	<u>72</u>	STIPULATION AND SETTLEMENT OF ATTORNEYS' FEES AND COSTS by B. C., A. T. submitted to Judge Hurd. (Cotter, Joshua) (Entered: 10/30/2018)
10/30/2018	<u>73</u>	AFFIDAVIT of <i>Posting of Notice of Proposed Settlement</i> by David Harder, Kevin Moore, Mark Smolinsky. (Behnke, Robert) (Entered: 10/30/2018)
12/13/2018	<u>74</u>	Joint MOTION Final Approval of Class-Action Settlement Motion Hearing set for 12/18/2018 01:00 PM in Utica before Judge David N. Hurd Response to Motion due by 12/3/2018 filed by B. C., A. T.. (Attachments: # <u>1</u> Memorandum of Law in Support of Joint Motion, # <u>2</u> Declaration Supplemental Declaration of Joshua Cotter in Support of Joint Motion, # <u>3</u> Proposed Order/Judgment Granting Joint Motion for Final Approval) Motions referred to David E. Peebles. (Cotter, Joshua) (Entered: 12/13/2018)
12/18/2018	<u>75</u>	ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT: ORDERED that 1. The Settlement Agreement filed by the parties on July 9, 2018 (Dkt. No. <u>74</u>) is APPROVED as fair, reasonable, and adequate to the class of "All 16- and 17-year-olds who are now or will be incarcerated at the Broome County Correctional Facility," to the subclass of "All 16- and 17-year-olds with disabilities, as defined by the Individuals With Disabilities Education Act, who are now or will be incarcerated at the Broome County Correctional Facility, and who are in need of special education and related services"; and to the subclass of "All 16- and 17-year-olds with psychiatric and/or intellectual disabilities, as defined by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, who now or will be incarcerated at the Broome County Correctional Facility, who are at risk of being placed in disciplinary isolation because of their disability"; and 2. The parties' agreement on fees and costs (Dkt. No. <u>72</u>) is APPROVED. Signed by Judge David N. Hurd on 12/18/18. (nas) (Entered: 12/18/2018)
12/18/2018		TEXT Minute Entry for proceedings held before Judge David N. Hurd in Utica, NY. Fairness Hearing on Class Settlement held on 12/18/2018. Counsel place agreement of terms and conditions of class action settlement on record. Judge Hurd, upon statements of counsel, notes that no direct objections have been received and approves and grants

	<p>the Final Approval of the Class–Action Settlement and will Order the Final Settlement Agreement and attorney's fees stipulation. Appearances: Samuel C. Young, Esq., and Susan M. Young, Esq. for plaintiffs A.T. and B. C.; Robert G. Behnke, Esq., for defendants David Harder, Mark Smolinsky, Kevin Moore. (Entered: 12/18/2018)</p>
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