

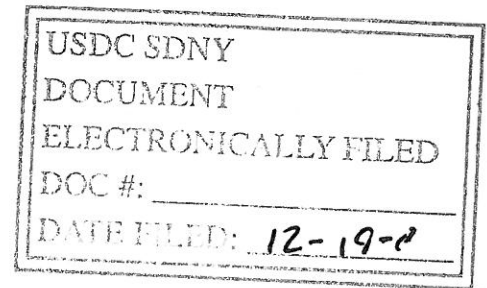
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

G.B., a minor child, by and through his guardian T.B.,
L.B., a minor child, by and through his parent V.R.,
J.A., a minor child, by and through his parent M.F.,
S.S., a minor child, by and through his parent V.S.,
S.R., a minor child, by and through her parent E.R.,
S.M., a minor child, by and through her parent E.B.,
A.S., a minor child, by and through his parent C.S.,
C.L., a minor child, by and through his parent K.M.,
K.M., a minor child, by and through his parent S.T.,
J.G., a minor child, by and through his parent B.G.,
G.D., a minor child, by and through his guardian L.D.,
M.M., a minor child, by and through his parent L.M.
D.C., a minor child, by and through his parent J.C.,
N.P. a minor child, by and through his parent D.P.,
B.B., a minor child, by and through his parent S.B.,
and all others similarly situated,

Plaintiffs,

vs.

GLADYS CARRIÓN, in her official capacity as
Commissioner of the New York State Office of Children
and Family Services; YDA DALE WARE, YDA
EDWARD DAVIS, YDA ALEXANDER MCCREADY,
MR. DEPORTA, MR. PARIS, MR. THOMPSON, MS.
PACETTE (phonetic), MR. COTTON, MR. GAL
(phonetic), YDA MOHAN, YDA BILL MCMORRIS,
YDA MATTHEW LAUBACH, YDA VISCONI, YDA
WISELL, YDA JOEL DEJESUS, YDA GAVIN, YDA
CROCKETT, YDA AVILES, YDA JAMELL ,
CAMPBELL, YDA EDDIE MOLLETTE, YDA MITCH
YANICK, YDA PHILLIP PALOMINO, YDA WATSON,
YDA M. SAWITSKY, YDA LUIS ROSADO, YDA
RAJEB MASESI, YDA ERIC VINCENT, YDA R.
CURTIS, YDA YOUNG, YDA BANTA, YDA JOANNE
LEHR, VICKY HUGHES, YDA ROBERT LACONTE,
YDA M. HYACINTH, YDA GULOTTA, YDA
JEFFREY BENTON, YDA WILLIAM COULMAN,
YDA RYAN CASEY, NANCY JABLONSKI, REC
SPECIALIST FLYNN, YDA WATSON, YDA
RODRIGUEZ, YDA KAGONYERA, MR. HEWES, MR.
BREWSTER, MS. HEPBURN (phonetic), MR.
WILLIAMS, MS. ROLETTE (phonetic), MR. GARITY,



09 Civ. 10582 (PAC)

**STIPULATION OF
SETTLEMENT**

MR. JENSON, MR. SMITH, MR. GAVOUGH
(phonetic), YDA KEITH NASH, YDA W. DAVIS, YDA
HOWD, YDA D. MANTI, YDA HOLLENBACK, AOD
JOHN PAZ, AOD RUTLAND, YDA DANIEL
BERNHARDT, YDA DWAYNE CREQUE, YDA
SPENCER, YDA LUCAS, YDA BRUMFIELD, YDA
VONDERCHEK, YDA GREGORY FISH, YDA BRYAN
CHAPMAN, YDA SEFARIS (phonetic), YDA
WINNICK, SERGEANT BRETT ROCKEFELLER,
SERGEANT FRED WELCH, SERGEANT WOOD,
FIRST SERGEANT MCENTEE, SERGEANT DALLAS
ECCLESTON, SERGEANT PALMER, AOD FIRST
SERGEANT TIMOTHY KINCH, SERGEANT
MICHAEL TOWNSEND, YDA RICHARD LALOSH,
YDA YOUNG, MR. CLOW, and JOHN DOES ## 1-27,
in their individual capacities,

Defendants.

This STIPULATION OF SETTLEMENT (“the Stipulation of Settlement”), dated
as of ^{August 7} ~~July 4~~, 2013, is made by and between plaintiffs, on the one hand, and defendant
GLADYS CARRIÓN, in her official capacity as Commissioner of the New York State
Office of Children and Family Services (hereinafter referred to as “Defendant Carrión” or
“OCFS”), on the other hand.

WHEREAS all plaintiffs were minors at the time of the alleged events and at the
commencement of this action, the Stipulation of Settlement will use initials when
identifying specific plaintiffs; and

WHEREAS plaintiffs G.B., L.B., J.A., S.S., S.R., S.M., A.S., and C.L, together
with A.D., who is no longer a plaintiff (“the Original Plaintiffs”), commenced this action

("the Action") on December 30, 2009, on behalf of themselves and a class of others similarly situated, seeking declaratory and injunctive relief against Defendant Carrión in her official capacity for alleged violations of plaintiffs' rights under the 14th Amendment of the United States Constitution as enforced by 42 U.S.C. § 1983, as well as under 29 U.S.C. § 794 (the Rehabilitation Act), and 42 U.S.C. § 12132 (the Americans with Disabilities Act); and

WHEREAS the Original Plaintiffs further sought in the original complaint redress for compensatory and punitive damages against forty-seven "John Doe" defendants, in their individual capacities, for allegedly depriving the Original Plaintiffs of their rights under the Fourteenth Amendment of the United States Constitution, as enforced by 42 U.S.C. § 1983, by unlawful use of force against the Plaintiff children in the form of physical restraints; and

WHEREAS by the Fourth Amended Complaint filed November 14, 2011, the present plaintiffs, G.B., L.B., J.A., S.S., S.R., S.M., A.S., C.L., K.M., J.G., G.D., M.M., D.C., N.P. and B.B., sought injunctive and declaratory relief on behalf of themselves and a class of others similarly situated, against Defendant Carrión, her agents, officials, employees and all persons acting in concert with them, (a) for OCFS' alleged failure (i) to prevent the use of excessive physical force against plaintiffs and other members of the proposed class, and (ii) to provide plaintiffs G.B., L.B., J.A., S.S., S.R., C.L., K.M., D.C. "and similarly situated youth with mental illness," with adequate mental health treatment and therapeutic housing options necessary to treat and prevent worsening of their mental illness, all in violation of the due process clause of the 14th Amendment of the United States Constitution, as enforced by 42 U.S.C. § 1983; and (b) for its alleged

discrimination against these allegedly mentally ill plaintiffs “and many members of the class” by failing to provide them with (i) “necessary mental health services as a means of preventing or reducing the exposure to and the use by staff of improper and harmful physical restraints;” (ii) “disciplinary alternatives to physical restraints as a reasonable accommodation so that the restraints, which exacerbate mental illness, are not imposed,” and (iii) an effective means for plaintiffs to report incidents of use of excessive force or unreasonable restraint, without fear of retaliation, in violation of Title II of the Americans with Disabilities Act and § 504 of the Rehabilitation Act, 29 U.S.C. § 794(a); and

WHEREAS in the Fourth Amended Complaint plaintiffs identified as defendants 80 named present or former employees of OCFS and several John Doe defendants, against whom they sought compensatory and punitive damages in their individual capacities; and

WHEREAS those defendants who have been identified and who have appeared have filed answers denying the essential allegations in the Fourth Amended Complaint; and

WHEREAS each plaintiff was a minor at the time the action was commenced and is therefore represented herein by his or her parent or guardian, but since the commencement of the action plaintiffs G.B., J.A., S.S., S.R., S.M., A.S., J.G., G.D., M.M. and D.C. have achieved majority; and by a separate Stipulation of Substitution and Voluntary Dismissal (“the Stipulation of Substitution and Dismissal”), the parties are agreeing to the substitution of said adult plaintiffs as parties to this action in place of their parents or guardians; and

WHEREAS Plaintiff K.M. died on December 2, 2011, after the commencement of this action and after his release from OCFS custody; his parent, S.T., was issued limited letters of administration of his estate by the New York State Surrogate's Court, Queens County, on June 5, 2012; and by the Stipulation of Substitution and Dismissal, all parties who have appeared are agreeing to the substitution of S.T. as a plaintiff in this action in place of K.M; and

WHEREAS plaintiffs and Defendant Carrión wish to settle this action without admitting fault or liability or any wrongdoing on the part of Defendant Carrión or any other defendant and have negotiated in good faith for that purpose; and

WHEREAS plaintiffs and Defendant Carrión agree that settlement of this Action without further litigation is in the public interest and that entry of this Stipulation and Order is the most appropriate means of resolving this Action; and

WHEREAS the plaintiffs represent and warrant that, other than this Action, they have no action or proceeding pending in any court, state or federal, arising out of or relating to the subject matter of this lawsuit; and

WHEREAS plaintiffs further represent and warrant that they are not Medicare recipients, have never been on Medicare, that no conditional payments have been made by Medicare on their behalf, and that they do not expect to be a Medicare recipient within the next 30 months;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, on behalf of plaintiffs and Defendant Carrión, if and only if the separate Stipulation of Substitution and Dismissal in the form of Exhibit A annexed hereto is fully signed and "so ordered" by the Court and Releases are duly signed by each

plaintiff in the form of Exhibit B and delivered to counsel for Defendant Carrión as provided herein, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 2000e-6(b) and 28 U.S.C. §§ 1331 and 1343.
2. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(b).

THE CLASS ACTION CLAIMS FOR INJUNCTIVE AND DECLARATORY RELIEF

Certification of the Class

3. This action shall be certified as a class action only with respect to the plaintiffs' claims for declaratory and injunctive relief pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(1)(A) and 23(b)(2).
4. The plaintiff class shall be defined as all present and future residents placed with the Office of Children and Family Services by New York State Family Court judges after a finding of juvenile delinquency and who are residing in any of the Covered Facilities.

Covered Facilities

5. "Covered Facilities" for purposes of this Stipulation of Settlement are:
 - a. Highland Residential Center, Highland, NY;
 - b. The Sergeant Henry Johnson Youth Leadership Academy, South Kortright, NY ("YLA");
 - c. Industry Residential Center, Rush, NY;
 - d. McQueen Reception Center, Brooklyn, NY; and

e. any facility that is repurposed to be a limited secure facility or a reception center operated by OCFS that is not or was not at any time subject to the Stipulation of Settlement between OCFS and the United States Department of Justice in the case of *United States v. State of New York*, No. 1:10-cv-858 (U.S.D.C., N.D.N.Y.) (hereinafter referred to as the “DOJ Settlement Agreement”).

Nothing in this Stipulation of Settlement precludes OCFS from closing any Covered Facility during the Term of this Stipulation of Settlement.

Staffing

6. OCFS represents that it currently has sufficient appropriation authority and funding in the State budget for the 2013-14 State fiscal year to recruit, hire and maintain the additional staff necessary to implement Crisis Prevention Management (“CPM”), pertaining to behavior de-escalation and physical restraint of youth, and the New York Model, a behavioral treatment program, in the Covered Facilities to the extent agreed to herein. OCFS agrees to make reasonable efforts to recruit, hire and maintain the staff in the Covered Facilities necessary to implement CPM and the New York Model in such facilities to the extent further agreed to herein, and the additional Quality Assurance and Improvement (“QAI”) program staff as described herein. The parties acknowledge that, due to the shortage of appropriate mental health professionals and other individuals willing to work in residential juvenile justice programs in certain areas of the State, along with unscheduled staff absences and separations from OCFS service,

OCFS may be unable to maintain a full complement of staff at each Covered Facility at all times. Failure to comply with any provisions in this Stipulation of Settlement that require the availability of staff will not be deemed a lack of substantial compliance provided OCFS continues to make reasonable efforts within the means available to recruit, hire and maintain sufficient staff to comply with such provisions. Reasonable efforts under this Stipulation of Settlement shall include application for additional compensation pursuant to the New York State Civil Service Law as agreed to herein – *i.e.*, when OCFS experiences recruitment difficulties for a particular job title related to the implementation of this Stipulation of Settlement at a Covered Facility or in the OCFS Home Office that meet the criteria in subdivision seven of section 130.7 of the Civil Services Law for seeking a geographical pay differential for such title in the applicable location, OCFS will apply to the Director of Classification and Compensation in the Department of Civil Service for approval for a geographical pay differential for such title. Throughout the period of this Stipulation of Settlement, OCFS will provide a quarterly report to plaintiffs' counsel detailing any open mental health and QAI positions in the Covered Facilities and in OCFS' Home Office, the duration of such vacancies and the efforts made to fill any such OCFS positions, including confirmation that the application identified in the immediately preceding sentence was made, where applicable.

CPM and New York Model Training

7. OCFS will complete the initial training and implementation of CPM and the New York Model in the Covered Facilities, in keeping with the following schedule:

Highland – Initial CPM training is completed. No New York Model training/implementation will be done.

YLA - Initial CPM training is completed. Initial New York Model training is completed.

Industry - Initial CPM training is completed. Initial New York Model training is completed.

McQueen Reception Center – Initial CPM training has commenced and will be completed by the end of July 2013. No New York Model training/implementation will be done.

8. If a facility is re-purposed to become a short-term limited secure facility or a reception center during the term of this Stipulation of Settlement, within existing resources and training schedules, initial training in CPM will begin by the end of the first month after the beginning of operation of the repurposed facility. CPM will be implemented within one month of the completion of initial CPM training. Within available resources and training schedules, if, during the term of this Stipulation of Settlement, a facility is re-purposed to become a limited secure facility that is not a short-term limited secure facility, initial training in CPM and the New York Model will begin as soon as practicable. The scheduled timeframes for the initial trainings are based on each Covered Facility being able to permit between 10 and 15 staff to attend each training class and still have sufficient staff available to supervise and care for the youth in the facility while the training classes are occurring. The timeframes may need to be extended at a particular facility if the training class sizes need to be reduced to maintain sufficient staffing in such facility. Should the timeframes need to be extended, OCFS shall comport with the provisions of paragraph 43 of this Stipulation of Settlement. For purposes of this Stipulation of Settlement, the term "short-term limited secure facility" shall mean a facility re-purposed as a limited secure facility on a short-term basis solely to address temporary increases in limited secure population pending transfer of limited

secure youth pursuant to New York Social Services Law § 404(7) (Close to Home Legislation). If a short-term limited secure facility continues to operate as a limited secure facility for six consecutive months after all New York City limited secure youth who were housed in said facility have been transferred to New York City pursuant to the Close to Home Legislation or otherwise discharged from OCFS custody, then the facility will become subject to the additional provisions in this Stipulation of Settlement that apply to a re-purposed limited secure facility that is not a short-term limited secure facility.

CPM and New York Model Implementation

9. Pre-implementation activities necessary to implement CPM and the New York Model, respectively, will begin in each Covered Facility, as applicable, immediately after the initial training is completed at such facility; implementation shall begin within one month of the completion of the initial training.

10. If OCFS provides formal notice of the closure of any Covered Facility pursuant to New York Executive Law § 501, New York Social Services Law § 404(7) (Close to Home Legislation) or any other provision of law, OCFS does not need to commence any remaining training and implementation activities required under this Stipulation of Settlement that have not already occurred at such facility.

11. OCFS shall notify plaintiffs' counsel as soon as possible, but no later than ten (10) business days, after its formal notice of the closure of any Covered Facility.

Restraints/Use of Force Terms

12. No later than two months after the effective date of this Stipulation of Settlement, OCFS shall create and maintain a system to track all indicated or substantiated findings against OCFS staff regarding abuse or neglect, as defined by New York Social Services Law, of a child in a Covered Facility by any such staff member who has been found to have violated OCFS policies related to restraints or use of force. The information in the tracking system and the results of any prior indicated or substantiated cases of abuse or neglect involving the inappropriate use of force by such a staff person shall be made available by OCFS' Home Office staff to the applicable facility administrator of a Covered Facility and shall be considered when developing any plan of prevention and remediation for such staff. The Facility Director and/or his or her designee shall sign off on any prevention and remediation plan for the staff member.

13. No later than two months after the effective date of this Stipulation of Settlement, all employees of the Covered Facilities whom OCFS seeks to terminate based on violations of OCFS policy related to restraints and/or use of force will be removed from any post in which they have contact with youth in OCFS custody during the pendency of termination proceedings.

14. No later than three months after the effective date of this Stipulation of Settlement, OCFS will institute a formal reintegration process for employees who return to a Covered Facility after OCFS unsuccessfully seeks to terminate such employees based on the inappropriate use of force. The formal reintegration process shall include, but is not limited to, a review of the applicable tracking system information as discussed in

paragraph 12 above regarding such staff member, remedial training if necessary and enhanced supervision.

15. When the provisions in paragraphs 13 and 14 above regarding the removal of staff from a post in which they have contact with youth during the pendency of termination proceedings and the reintegration process in each Covered Facility are in place, they shall be reviewed as part of the QAI program.

Video Cameras

16. OCFS will continue to pursue the current capital project requests it has submitted to the Office of General Services for the installation of surveillance cameras with video coverage in the public areas of those Covered Facilities that do not have such cameras. For the purposes of this Stipulation of Settlement, "public areas" mean the shared spaces in the residents' units, recreation areas (inside and outside of the buildings), the central services units, cafeteria, school, hallways, and all other areas commonly used by residents except for resident bedrooms and bathroom areas.

17. Once surveillance cameras are installed at a Covered Facility, OCFS will maintain copies of all filmed incidents involving physical restraints at such facility at least until this Stipulation of Settlement ends. Additionally, OCFS will, within one year after the effective date of this Stipulation of Settlement, develop and issue a policy requiring copies of all filmed incidents involving physical restraints in the Covered Facilities to be maintained for at least six months.

18. If OCFS provides formal notice of the closure of any Covered Facility pursuant to New York Executive Law § 501, New York Social Services Law § 404(7)

(Close to Home Legislation) or any other provision of law, OCFS may stop proceeding with the surveillance camera project at such facility.

Quality Assurance and Improvement (QAI)

19. OCFS shall implement a QAI program at each facility as follows:

a. YLA: QAI staff will conduct a preliminary implementation and technical assistance review that includes the data collection process at YLA as soon as practicable after sufficient additional QAI staff are hired and trained;

b. Industry Residential Center: QAI staff will conduct a preliminary implementation and technical assistance review that includes the data collection process at Industry within eight to twelve weeks after both CPM and the New York Model have begun to be implemented at such facility, or as soon as practicable after sufficient additional QAI staff are hired and trained, whichever is later;

c. McQueen Reception Center, or any facility that is re-purposed as a reception center or as a short-term limited secure facility: QAI staff will conduct a preliminary implementation and technical assistance review of CPM implementation that includes the data collection process at any such facility within eight to twelve weeks after CPM has begun to be implemented at the facility, or as soon as practicable after sufficient additional QAI staff are hired and trained, whichever is later;

d. Highland Residential Center: QAI staff will conduct a preliminary implementation and technical assistance review, to the extent

further agreed to herein, including a data collection process at Highland for: CPM; use of the Admission Screening Interview Protocol (Form OCFS 1448); initial contact with a mental health clinician and use of a screen for suicidal ideation; completion of a core history; provision of substance abuse treatment services, as appropriate; completion of Treatment Team Plans; reviews of Treatment Team Plans and Treatment Team Plan Notes, and content of Treatment Team Plans and/or Treatment Team Plan Notes for summaries of responses to mental health interventions and, as appropriate, suicide risk response and reflection of the needs of developmentally disabled youth. Such preliminary implementation and technical assistance review at Highland will be conducted within eight to twelve weeks after all programs have been implemented or as soon as practicable after sufficient additional QAI staff are hired and trained, whichever is later; and

e. Any re-purposed, non-short-term limited secure facility.

QAI staff will conduct a preliminary implementation and technical assistance review that includes the data collection process at any facility re-purposed as a limited secure facility that is not a short-term limited secure facility, within eight to twelve weeks after both CPM and the New York Model have begun to be implemented at such facility, or as soon as practicable after sufficient additional QAI staff are hired and trained, whichever is later.

20. QAI staff will conduct the applicable portions of an initial full pilot quality assurance and improvement program review at each Covered Facility approximately four months after the completion of the preliminary implementation and technical assistance review at such facility.

21. QAI staff will conduct the applicable portions of a full quality assurance and improvement program review at each Covered Facility approximately once every six months after completion of the initial full pilot quality assurance and improvement program review at such facility.

22. Upon completion of each review at a Covered Facility, QAI staff will issue a report containing the review findings and specifying any necessary short and/or long-term action plans such facility must develop to improve facility practices. Covered Facilities will develop and implement such plans.

23. QAI staff will implement the applicable portions of the quality assurance and improvement program in the Covered Facilities in substantially the same manner as such portions of the program are being implemented in the OCFS facilities being monitored by the court-ordered monitors hired under the DOJ Settlement Agreement or as otherwise required by the Justice Center for the Protection of People with Special Needs. OCFS will inform plaintiffs' counsel of any proposed substantive changes to the QAI program, including any changes made pursuant to requests by the Justice Center for the Protection of People with Special Needs. OCFS will notify plaintiffs' counsel no later than ten (10) business days of the date of such determination.

Mental Health Screening and Assessment

24. As of the effective date of this Stipulation of Settlement, all youth who enter a Covered Facility will be subject to the Admission Screening Interview Protocol (Form OCFS 1448) within approximately two hours of entering such facility. While at the McQueen Reception Center, or any facility that is deemed to be a reception center throughout the pendency of this Stipulation of Settlement, youth will be assessed by a qualified mental health professional using reliable and valid measures to screen for drug and alcohol problems/use, suicide risk, anxiety and mood disorders, trauma exposure and PTSD symptoms. Within approximately seventy-two hours after being admitted to a Covered Facility other than McQueen Reception Center, or any other reception center, each youth will be assigned a mental health clinician and have an initial contact with a mental health clinician. Such mental health clinician will perform a screen for suicidal ideation within the seventy-two hour time frame.

25. No later than four months after the effective date of this Stipulation of Settlement, OCFS will revise the Admission Screening Interview Protocol (Form OCFS 1448) questions, where necessary, to use language more easily understandable by justice-involved youth and compatible with accepted standards for screening instruments used in juvenile justice settings upon entry of youth into a facility. Within one month after completing such revisions to OCFS 1448, the QAI Bureau will modify or clarify, where appropriate, the corresponding data variables used in its QAI program review process to monitor the Admission Screening Interview Protocols at the Covered Facilities.

26. Once the New York Model begins to be implemented at a Covered Facility, a qualified mental health professional will complete the portion of the Integrated

Assessment (OCFS 4954) regarding mental health issues for all youth admitted thereafter within approximately 30 days of each youth's admission to such facility. At Highland Residential Center, no later than four months after the effective date of this Stipulation of Settlement, a qualified mental health professional will complete a core history for treatment planning purposes for all youth admitted thereafter within approximately 30 days after each youth's admission to such facility.

Mental Health Treatment Planning and Quality Assurance

27. Approximately four weeks after any Covered Facility begins to implement CPM or the New York Model, whichever is sooner, each youth residing at such facility will have an Individualized Intervention Plan (Form OCFS 2098). Approximately 30 days after any Covered Facility begins to implement the New York Model, a youth's support team will develop an Integrated Support Plan (Form OCFS 4953) for each youth residing at the facility and will review such plan approximately every 30 days thereafter. For each youth that subsequently enters a Covered Facility that has begun to implement the New York Model, both such plans will be developed approximately 30 days following the youth's entry into the facility. At Highland Residential Center, no later than four months after the effective date of this Stipulation of Settlement, a youth's Treatment Team will develop a Treatment Team Plan for each youth residing at the facility and will review such plan approximately every 30 days thereafter.

28. Approximately four weeks after any initial training in the New York Model is completed at a Covered Facility, such facility will begin to implement practices and procedures to assess each youth's response to mental health interventions. The

youth's responses to such mental health interventions will be documented and summarized on the youth's Integrated Support Plan and reviewed during subsequent support team meetings. No later than four months after the effective date of this Stipulation of Settlement, at Highland Residential Center, such mental health interventions will be documented and summarized on the youth's Treatment Team Plan Notes and reviewed during subsequent Treatment Team meetings.

29. No later than six months after the effective date of this Stipulation of Settlement, the QAI Bureau will modify or clarify, where appropriate, the practices and procedures used to assess and document youth response to mental health interventions.

Services for Developmentally Disabled and Developmentally Delayed Youth

30. As part of the intake screening and assessment process, OCFS will continue to have a qualified mental health professional assess each youth entering McQueen Residential Center, or any other reception center, to identify whether the youth may be developmentally disabled or developmentally delayed.

31. No later than six months after the effective date of this Stipulation of Settlement, the Individual Intervention Plans and either the Integrated Support Plans or Treatment Team Plans/Treatment Team Plan Notes, as applicable, developed under this Stipulation of Settlement will reflect the needs of developmentally disabled or developmentally delayed youth, when appropriate.

32. By the end of 2013, OCFS will provide training to qualified mental health professionals and direct care staff in the Covered Facilities on the needs of developmentally disabled and developmentally delayed youth and strategies to address and accommodate their needs.

33. No later than six months after the effective date of this Stipulation of Settlement, the QAI Bureau will modify or clarify, where appropriate, the data variables used in its quality assurance and improvement program review process for applicable Covered Facilities to monitor Individual Intervention Plans and either the Individual Support Plans or the Treatment Team Plans/Treatment Team Plan Notes, as applicable, to address developmentally disabled and developmentally delayed youth.

Suicide Risk Reduction and Response

34. No later than two months after the effective date of this Stipulation of Settlement, OCFS will finalize and issue PPM 3247.60 to all of the Covered Facilities.

35. No later than six months after the effective date of this Stipulation of Settlement, QAI staff will modify or clarify, where appropriate, the data variables used in its quality assurance and improvement program review process for applicable Covered Facilities to monitor Individual Intervention Plans and either the Individual Support Plans or the Treatment Team Plans/Treatment Team Plan Notes, as applicable, to address suicide risk reduction and response.

36. No later than six months after the effective date of this Stipulation of Settlement, OCFS will review and, if necessary, revise the curriculum for the annually mandated Suicide Risk Reduction and Response training to be consistent with OCFS' new policy PPM 3247.60 Suicide Risk and Reduction. Subsequently, OCFS will train applicable staff at the Covered Facilities in Suicide Risk Reduction and Response by the end of 2013.

Substance Abuse Treatment Services

37. No later than six months after the effective date of this Stipulation of Settlement, OCFS will develop a substance abuse treatment services program manual that documents the assessment and intervention services offered to youth along the continuum of care as referenced in OCFS Policy PPM 3243.33.

38. By the end of 2013, OCFS staff providing substance abuse treatment services at each Covered Facility, other than McQueen Reception Center or any other reception center, will receive training on delivering such treatment services in a manner consistent with the program manual.

39. No later than twelve months after the effective date of this Stipulation of Settlement, those youth residing at each Covered Facility, other than McQueen Reception Center or any other reception center, who are identified as needing substance abuse treatment services will receive such services in a manner consistent with the program manual.

40. QAI staff will continue to include monitoring of substance abuse treatment services along the continuum of care, as applicable, as part of the quality assurance and program improvement reviews it conducts at each Covered Facility other than McQueen Reception Center or any other reception center.

Monitoring

41. OCFS will provide plaintiffs' counsel with prior notice of when each QAI program review is scheduled. OCFS will provide plaintiffs' counsel with the portions of the QAI program review report applicable to this Stipulation of Settlement issued by the OCFS QAI Bureau after each quality assurance and improvement program review

conducted at each Covered Facility as further agreed to herein. After providing plaintiffs' counsel with the applicable report information for the first six-month full review at each Covered Facility, OCFS will provide plaintiffs' counsel and/or expert or consultant chosen by such counsel with the opportunity to attend a full-day meeting at such facility with QAI staff to discuss the quality assurance process that was used at such facility and the applicable results of the review and shall provide plaintiffs' counsel, in advance of each such orientation meeting, with three (3) restraint packets and one (1) mental health record, randomly selected, that will be presented at such meeting to the extent time allows. For each subsequent full review at each Covered Facility, OCFS will provide plaintiffs' counsel with all restraint packets and mental health services records used by QAI staff during the review. The documents provided to plaintiffs' counsel pursuant to this provision shall be treated as confidential and not disclosed, except to the extent provided herein or as otherwise ordered by the Court. Access to the confidential material shall be limited to:

- (a) Attorneys for the Plaintiffs herein;
- (b) Attorneys for the Defendants herein;
- (c) Employees and independent contractors of the respective attorneys for Plaintiffs or Defendants who have direct functional responsibility with respect to this Stipulation of Settlement;
- (d) The parties' respective experts and consultants, to the extent deemed necessary to the performance of this Stipulation of Settlement by the respective attorneys for plaintiffs or defendants upon the condition that such experts and consultants

agree in writing to maintain the confidentiality of such information and to use such information solely in relation to this Stipulation of Settlement;

(e) Individual employees of OCFS, to the extent that such individual employees would have access to the documents as part of their employment with OCFS;

(f) Court reporters, to the extent deemed necessary for the conduct of this litigation by the respective attorneys for plaintiffs or defendants; and

(g) The Court.

Confidential material shall not be released or disclosed in any manner to any person who is or was a resident in the custody of OCFS. OCFS reserves the right to redact the name and other individual youth identifying information from such records. The applicable documents used by QAI for review of restraints shall consist of 20 percent of restraint packets for the prior six months for small facilities (25 beds or less) and 10 percent for larger facilities. If there is a very small sample, QAI staff may review more restraint packets. The applicable documents used by QAI staff to review mental health records shall consist of at least five youth records per facility with a concentration on youth who are receiving psychiatric medication.

42. OCFS believes, based on its experiences in the OCFS facilities covered by the DOJ Stipulation of Settlement, that it is likely to take each Covered Facility a year or more of full quality assurance and program improvement reviews, coaching and other staff support activities to integrate fully within the facility the skills and processes necessary to implement CPM and, as applicable, the New York Model, in a consistent manner. As a result, monitoring regarding substantial compliance at a particular facility with the applicable provisions of this Stipulation of Settlement will not begin until the

third full quality assurance and program improvement review has been completed at such facility.

43. For those activities required under the Stipulation of Settlement relating to the provision of training, the installation of cameras, and the revision to or development of documents and processes that are not monitored as part of the QAI review process or otherwise subject to specific reporting to plaintiffs' counsel under other provisions of the Stipulation of Settlement, OCFS shall notify plaintiffs' counsel when the activities have been completed. Should OCFS become aware of a significant potential delay or barrier to implementing any aspect of this Stipulation of Settlement, including the need to extend agreed upon time frames, OCFS shall notify plaintiffs' counsel, as soon as possible, but in no event later than ten (10) business days from OCFS' discovery of the potential delay or barrier.

44. Nothing in this Stipulation of Settlement shall be deemed to preclude OCFS from amending any policy and procedure subject to this Stipulation of Settlement in a manner OCFS determines necessary to improve the provision of services to youth or better address operational matters at the Covered Facilities. OCFS will provide plaintiffs' counsel with any substantive change in any such policy or procedure within ten (10) business days after the effective date of such policy or procedure.

45. In addition to any reports or records already specified above, OCFS shall provide plaintiffs' counsel with monthly reports containing the number of restraints used, the type of restraints used, the number of youth reported injured as a result of restraint events, and monthly care days (*i.e.*, the sum of the total number of days each youth was in care at the facility during the applicable month) for each of the Covered Facilities.

OCFS shall also provide plaintiffs' counsel with a monthly report of the number of staff in each of the Covered Facilities who were indicated or substantiated in a report of abuse or neglect during the previous month for violating OCFS policies related to restraints or use of force for an act that is alleged to have occurred on or after the effective date of this Stipulation of Settlement.

46. Plaintiffs' counsel may visit each Covered Facility to meet with class members for purposes directly related to the Stipulation of Settlement once every six months. Such visits shall be at times mutually agreed to by the Parties and shall be designed to provide the plaintiffs' counsel with sufficient time to meet with class members with as minimal disruption as possible to the youths' participation in any mandatory educational programming. The first visit shall take place no later than six months following the effective date of this Stipulation of Settlement. In addition, should plaintiffs' counsel articulate a good faith basis for the need to meet with one or more class members apart from the six month visits, they shall be permitted to do so.

Term, Compliance and Retention of Jurisdiction

47. The term of this Stipulation of Settlement shall begin on the date it is entered by the Court and shall presumptively end, for each Covered Facility, one year after the completion of the third full quality assurance and program improvement review for such facility, or shall end upon the closure of such facility, whichever is sooner. The term of this Stipulation of Settlement shall presumptively end overall one year after the completion of the third full quality assurance and program improvement review at the last Covered Facility that remains open during the term of the Stipulation of Settlement. These presumptions shall govern unless Plaintiffs can establish that there is

noncompliance occurring at the applicable presumptive end date that is substantial and sufficiently widespread as to be systemic, in which case the Court has jurisdiction to extend the applicable term of the Stipulation of Settlement. This Court shall otherwise retain jurisdiction of this action for such period only to enforce the provisions of this Stipulation of Settlement, to resolve any disputes that arise under this Stipulation of Settlement and decide any application filed by any party in accordance with this Stipulation of Settlement, and to issue orders as may be necessary and appropriate for the effectuation of its terms. Subject to this paragraph, after the applicable term ends, this Stipulation of Settlement shall automatically cease to bind the parties with respect to the specific Covered Facility or overall, as applicable, as well as their successors, agents, employees, assigns and those acting in concert with them and, upon completion of the overall term of the Stipulation of Settlement, the jurisdiction of the Court over this Stipulation of Settlement shall automatically end.

48. "Substantial compliance" at a particular Covered Facility with the applicable provisions of this Stipulation of Settlement relating to implementation of CPM and the New York Model; the screening, assessment and provision of services under paragraphs 24 through 40 of this Stipulation of Settlement; and the other activities of the Stipulation of Settlement that are specified in the Stipulation of Settlement as being part of the QAI review process, shall presumptively be determined through the results of QAI reviews using the same percentage of cases, measures and factors and at the same level of compliance constituting substantial compliance as OCFS uses in the QAI review reports that are provided to the court approved monitors and the United States Department of Justice relating to compliance with applicable provisions of the DOJ Settlement

Agreement at the facilities covered by said Agreement. However, for the Court's consideration of whether there is a failure to be in substantial compliance with respect to these activities, plaintiffs may rebut this presumption with relevant valid evidence that demonstrates either that the QAI process was done incorrectly or was not a statistically valid method for measuring compliance with the applicable provisions of the Stipulation of Settlement and that demonstrates that the failure to be in substantial compliance, in whole or in part, is substantial and sufficiently widespread as to be systemic. For the remaining provisions of the Stipulation of Settlement, including the Plaintiffs' burden to rebut OCFS's presumptive compliance under any terms of this Settlement Agreement, defendant Carrión and OCFS shall only be determined to have failed to be in 'substantial compliance' with a particular provision of this Stipulation of Settlement if the failure, in whole or in part, is substantial and sufficiently widespread as to be systemic.

49. During the term of the Stipulation of Settlement, if plaintiffs' counsel believes that Defendant Carrión is not in "substantial compliance," as defined in paragraph 48 above with the terms of this Stipulation of Settlement, plaintiffs' counsel may not seek relief from the Court for such failure of substantial compliance without first requesting in writing and attending a meeting with counsel for Defendant Carrión and OCFS counsel at a mutually agreeable time and place to discuss and attempt to resolve the dispute(s). The parties will schedule and attend such meeting(s) within thirty (30) days after the receipt of said written request by counsel for Defendant Carrión. Nothing said by either party or counsel for either party during those meetings may be used by the opposing party in any subsequent litigation in this or any other lawsuit or for any purpose other than implementing procedures and services for class members and reporting

requirements pursuant to this Stipulation of Settlement. In the event that the aforementioned meeting results in an agreement on an action plan to address the dispute(s), plaintiffs' counsel may not seek relief from the Court for violation of this Stipulation of Settlement until at least 30 days after the projected completion of such action plan, and only if plaintiffs' counsel then believes at such time that Defendant Carrión and OCFS are still not in "substantial compliance," as defined in paragraph 48 above, with the terms of this Stipulation of Settlement after such 30 day period. In the event that the aforementioned meeting does not result in an agreement on an action plan to address the dispute(s), plaintiffs' counsel may, in its sole discretion, seek immediate relief from the Court for violation of this Stipulation of Settlement without pursuing any other procedure with, or providing prior notice to, OCFS' counsel. Any violation of paragraphs 6 through 50 of this Stipulation of Settlement shall not detract from or otherwise affect the Release provided for in paragraph 57 or the dismissal of the action provided for in the Stipulation of Substitution and Dismissal referred to in paragraph 58.

Non-Retaliation

50. OCFS agrees that it shall not retaliate against any person because that person has provided any information or assistance to plaintiffs' counsel, QAI staff or the Court, or has filed or intends to file a complaint or has participated in any other manner in any investigation or proceeding relating to this Stipulation of Settlement. OCFS agrees to investigate any allegations of retaliation in violation of this Stipulation of Settlement and take whatever action it deems appropriate.

**THE CLAIMS OF THE INDIVIDUAL PLAINTIFFS FOR DAMAGES,
ATTORNEYS' FEES AND COSTS**

51. For and in consideration of the dismissal of the Action with prejudice and other good and valuable consideration, the sufficiency of which is hereby acknowledged, upon the dismissal of this Action and the delivery to Defendant Carrión's counsel of the releases referred to in paragraph 57 below, the State of New York, on behalf of OCFS, shall make two payments to plaintiffs' counsel on behalf of the plaintiffs, as follows:

a. A single payment of five hundred thousand (\$500,000) dollars shall be issued for plaintiffs as compensation for personal physical injury and will be treated as such with respect to information reporting to the Internal Revenue Service (I.R.S.) and New York State, for which an I.R.S. Form 1099 shall be issued to Legal Aid Society, in full satisfaction of any and all claims for compensatory damages in this Action, allocated among the individual plaintiffs as follows:

GB: \$ 52,000_____

LB : \$ 40,000 _____

JA : \$ 25,000_____

SS: \$ 30,000_____

SR : \$ 30,000_____

SM : \$ 55,510_____

AS : \$ 5,000_____

CL : \$ 2,500_____

ST for KM : \$ 5,000_____

JG : \$ 10,000_____

GD : \$ 25,000__

MM : \$ 15,000__

DC : \$ 9,990__

NP : \$ 150,000__

BB : \$ 45,000__

The single payment referred to in this subparagraph shall be made payable and delivered to "The Legal Aid Society, Attention: Christine Bella, Esq., 199 Water Street, New York, NY 10038."

b. The sum of three hundred ninety thousand, three hundred ninety one dollars, and forty two cents (\$390,391.42) for which an I.R.S. Form 1099 shall be issued to The Legal Aid Society, and the sum of six hundred nine thousand, six hundred eight dollars and fifty eight cents (\$609,608.58) for which an I.R.S. Form 1099 shall be issued to Orrick, Herrington and Sutcliffe LLP, in full and complete satisfaction of any and all claims for attorneys' fees, costs, disbursements and expenses incurred by plaintiffs for any and all counsel who have at any time represented plaintiffs in the Action as well as in connection with any other proceeding, administrative, judicial, or otherwise, and any other claim or action alleging any of the acts, transactions, occurrences, or omissions asserted in the Action. The payment of \$390,391.42 referred to in this subparagraph shall be made payable and delivered to "The Legal Aid Society, Attention: Christine Bella, Esq., 199 Water Street, New York, NY 10038." The payment of \$609,608.58 referred to in this paragraph shall be made payable and delivered to "Orrick, Herrington and Sutcliffe LLP, Attention Rene Kathawala, Esq., 51 West 52nd Street, New York, NY 10019."

52. Any taxes on the payments and/or interest or penalties on taxes on the payments referred to in paragraph 51 of this Stipulation of Settlement shall be the sole responsibility of plaintiffs or their attorneys respectively, and plaintiffs and their attorneys shall have no claim, right, or cause of action against the State of New York, OCFS, or any of their agencies, departments, or subdivisions on account of such taxes, interest, or penalties.

53. Payment of the amounts recited in paragraph 51 above is subject to the approval of all appropriate New York State officials in accordance with the provisions for indemnification under Section 17 of the New York Public Officers Law. Plaintiffs and plaintiffs' counsel agree to execute and deliver promptly to counsel for Defendant Carrión herein all necessary or appropriate vouchers and other documents requested with respect to such payment. Except for the payment to be made to plaintiffs' attorneys in satisfaction of any claims for attorneys' fees, costs, disbursements and expenses, the provisions of Chapter 62 of the Laws of 2001 (relating to crime victims, funds of convicted persons and the New York State Office of Victims Services, formerly the Crime Victims Board) may be applicable to payments hereunder.

54. In the event payments of the amounts recited in paragraph 51 above are not made within one hundred and twenty (120) days after the receipt by counsel for Defendant Carrión of a copy of the fully executed So-ordered Stipulation of Settlement as entered by the Court, and subject to plaintiffs' prompt execution and delivery to counsel for Defendant Carrión all necessary and appropriate vouchers and other documents requested with respect to such payment, interest shall accrue on the outstanding principal balance at the rate set forth in 28 U.S.C. § 1961 beginning on the one hundred and

twenty-first day after receipt by Defendant Carrión's counsel of a copy of the fully executed So-ordered Stipulation of Settlement, plus any period during which (a) the Comptroller postpones payment under §632-a of the Executive Law and subsection 12-g of § 8 of the New York State Finance Law or (b) payment by the Comptroller has been stayed by court order.

55. In further consideration of the payment of the sums set forth in paragraph 51, plaintiffs hereby waive, release and forever discharge defendants and any and all current or former employees of OCFS, in their individual and official capacities, and their heirs, executors, administrators and assigns and the State of New York and OCFS from any and all claims, known or unknown, arising out of the plaintiffs' Medicare eligibility for and receipt of Medicare benefits, and/or arising out of the provision of primary payment (or appropriate reimbursement), including causes of action pursuant to 42 U.S.C. §1395y(b)(3)(A) of the Medicare, Medicaid and SCHIP Extension Act of 2007. Plaintiffs agree to defend, indemnify and hold harmless the defendants, OCFS and the State of New York regarding any liens or past and/or future Medicare payments, presently known or unknown in connection with this matter.

56. Plaintiffs' right to seek attorneys' fees and expenses for any work after the effective date of this Stipulation of Settlement shall be limited to:

(a) work done relating to implementation of the stipulation terms at a specific facility during the applicable monitoring period at such facility as defined in paragraph 42 above; and,

(b) to no more than \$50,000 over the full term of this Stipulation of Settlement, except that this limitation shall not apply to any work done solely on a

successful enforcement motion or proceeding that is not otherwise covered under (a) above, provided that plaintiffs have complied, as a condition precedent to such a motion or proceeding, with the requirements of paragraph 49 of this Stipulation of Settlement.

RELEASES

57. In consideration of the payment of the sums recited in paragraph 51 above, the surviving plaintiffs who have now achieved majority, the surviving plaintiffs who are minors by their parents or guardians, and S.T., as administrator of the estate of plaintiff K.M., deceased, shall each duly execute and deliver to plaintiffs' counsel a release in the form annexed hereto as Exhibit B releasing and discharging each of the defendants and any and all current or former employees or agents of New York State, including OCFS, in their individual and official capacities, and their heirs, executors, administrators and assigns, and the State of New York and its agencies, including, without limitation, OCFS, from any and all claims, liabilities and causes of action which said plaintiff or plaintiff's representatives, heirs or assigns ever had, now has or hereafter shall or may have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Stipulation of Settlement. This Stipulation of Settlement shall not be presented to the Court for approval until plaintiffs' counsel has delivered to counsel for Defendant Carrión duly executed releases from or on behalf of each plaintiff, which counsel for Defendant Carrión will hold in escrow until this Stipulation of Settlement and the Stipulation of Substitution and Dismissal provided for in paragraph 58 below are "so ordered" by the Court, at which time the executed Releases may be released from escrow to the defendants. If the Court declines to "so order" this

Stipulation of Settlement or the Stipulation of Substitution and Dismissal, counsel to Defendant Carrión will return the executed Releases to plaintiffs' counsel.

SUBSTITUTION OF PLAINTIFFS AND DISMISSAL OF THIS ACTION

58. Simultaneously with the execution of this Stipulation of Settlement, counsel for plaintiffs and Defendant Carrión shall execute, and present for signature to counsel for all other defendants who have appeared in this action, a Stipulation of Substitution and Voluntary Dismissal, in the form annexed hereto as Exhibit A (the "Stipulation of Substitution and Dismissal"), (a) consenting to the substitution as a plaintiff in his or her own right of each plaintiff who has reached majority in his or her own right rather than by his or her parent or guardian, (b) consenting to the substitution as a plaintiff of S.T. as administrator of the estate of plaintiff K.M., deceased, and (c) voluntarily dismissing this Action and all claims asserted in the Action against all defendants, pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, with prejudice and without payments, costs, disbursements, attorneys' fees, or expenses in excess of the amounts specified in paragraph 51 above. This Stipulation of Settlement shall be presented to the Court for approval if, and only if, (a) counsel for all parties have executed the Stipulation of Substitution and Dismissal and (b) the Stipulation of Substitution and Dismissal is fully signed and "so ordered" by the Court.

MODIFICATION; SEVERABILITY

59. There shall be no modification of this Stipulation of Settlement without the written consent of plaintiffs and Defendant Carrión, through their respective counsel, and the approval of the Court.

60. In the event that any provision of this Stipulation of Settlement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Stipulation of Settlement.

**ENTIRE AGREEMENT; NO ADMISSION OR
PRECEDENTIAL VALUE**

61. This Stipulation of Settlement represents the entire agreement between plaintiffs and Defendant Carrión concerning the subject matter described herein. No prior agreements, oral representations, or statements shall be considered part of this Stipulation.

62. Nothing in this Stipulation of Settlement shall be construed as an admission or acknowledgment of liability, wrongdoing, or violation of law by Defendant Carrión or any other defendant regarding any of the allegations contained in the Fourth Amended Complaint in this Action.

63. This Stipulation of Settlement and any Order entered thereon shall have no precedential value or effect whatsoever, and shall not be admissible, in any other action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Stipulation of Settlement.

EXECUTION OF STIPULATION


64. This Stipulation of Settlement may be executed in counterparts, each of which shall be an original and shall constitute one and the same instrument.

Dated: New York, New York
August 7, 2013

THE LEGAL AID SOCIETY

Attorneys for Plaintiffs

By:



Christine L. Bella

199 Water Street

New York, New York 10038

(212) 577-3349

ORRICK, HERRINGTON & SUTCLIFFE

LLP

Attorneys for Plaintiffs

By:



René Kathawala

51 West 52nd Street

New York, New York 10019

(212) 506-5100

ERIC T. SCHNEIDERMAN

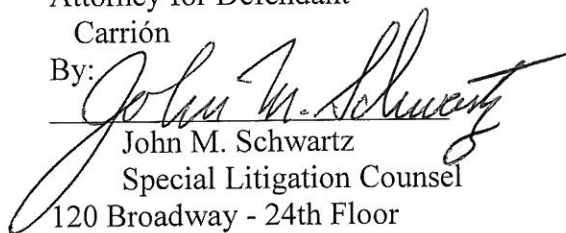
Attorney General of the

State of New York

Attorney for Defendant

Carrión

By:



John M. Schwartz

Special Litigation Counsel

120 Broadway - 24th Floor

New York, New York 10271

(212) 416-8559

SO ORDERED

Date: 12/19/2013



U.S.D.J.