

HE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

217-2020-CV-00026

David Meehan

v.

New Hampshire Department of Health and Human Services, *et al.*

**STATE DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT**

The State of New Hampshire Department of Health and Human Services (“DHHS”); Kerrin Rounds, Acting Commissioner of DHHS<sup>1</sup>; Bureau of Juvenile Justice Services (“JJS”); Division for Children, Youth and Families (“DCYF”); and Sununu Youth Services Center (“SYSC”) f/k/a Youth Development Center (“YDC”) (hereafter, collectively, “the State Defendants”), by and through their attorneys, the Office of the Attorney General, hereby answer those of the Plaintiff’s allegations which survive following the Court’s May 26, 2021 order on their motion to dismiss, as follows:

*Introduction.* This section of the complaint consists largely of argument and legal conclusions to which no response is required. To the extent allegations are made with respect to unnamed “individuals” and “children,” State Defendants are without sufficient information to admit or deny these allegations. The factual allegations in this section are therefore denied, generally, except that it is admitted that effective June 30, 1981, RSA chapter 621 charges DHHS

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<sup>1</sup> Kerrin Rounds was acting commissioner of DHHS at the time this suit was filed. She no longer serves in that capacity. Defendants would not object to substitution of the current Commissioner as a defendant herein, but barring same, the claims against Ms. Rounds should be dismissed.

with the obligation to administer YDC to effect certain purposes and policies, including to provide protection, care and rehabilitative services.

1. State Defendants are without sufficient information to admit or deny these allegations.

2. The first sentence is admitted. With respect to the second sentence and throughout the remainder of the Complaint and Answer, State Defendants interpret the phrase “at all times relevant to this Complaint” to mean the period of time that Plaintiff resided at YDC: December 1, 1995 to September 6, 1999. With that understanding the second sentence is admitted. The remainder of this paragraph is admitted.

3. Denied.

4. With respect to the first sentence, it is admitted that there is currently a Bureau of Field Services within DHHS of which Juvenile Justice Services (“JJS”) is a part, with a mailing address of 129 Pleasant Street, Concord, New Hampshire 03301. The remainder of the first sentence and the second sentence are denied.

5. With respect to the first sentence, it is admitted that there is currently a Division for Children, Youth, & Families within DHHS (“DCYF”) with a mailing address of 129 Pleasant Street, Concord, New Hampshire 03301. The remainder of the first sentence and the second sentence are denied.

6. Admitted that Sununu Youth Services Center (“SYSC”) was formerly known as the Youth *Development* Center (“YDC”). Admitted that at all times relevant to this Complaint, YDC was a facility at which juveniles, some as young as eleven years old, who were adjudicated as “delinquent” were detained in a secure facility. Admitted that SYSC/YDC is currently administered by DHHS. The remainder of this paragraph is denied.

7. State Defendants are without sufficient information to admit or deny the allegations in the first sentence. The second sentence is admitted to the extent it is alleged that Jeffrey Buskey was an employee of YDC, but State Defendants are currently without sufficient information to admit or deny that he was an employee of YDC at all times relevant to the allegations in the Complaint.

8. State Defendants are without sufficient information to admit or deny the allegations in the first sentence. The second sentence is admitted to the extent it is alleged that Stephen Murphy was an employee of YDC, but State Defendants are currently without sufficient information to admit or deny that he was an employee of YDC at all times relevant to the allegations in the Complaint.

9. State Defendants are without sufficient information to admit or deny the allegations in the first sentence. The second sentence is admitted to the extent it is alleged that James Woodlock was an employee of YDC, but State Defendants are currently without sufficient information to admit or deny that he was an employee of YDC at all times relevant to the allegations in the Complaint.

10. State Defendants are without sufficient information to admit or deny the allegations in the first sentence. The second sentence is admitted to the extent it is alleged that Frank Davis was an employee of YDC, but State Defendants are currently without sufficient information to admit or deny that he was an employee of YDC at all times relevant to the allegations in the Complaint.

11. State Defendants are without sufficient information to admit or deny the allegations in the first sentence. The second sentence is admitted to the extent it is alleged that Richard Brown was an employee of YDC, but State Defendants are currently without sufficient

information to admit or deny that he was an employee of YDC at all times relevant to the allegations in the Complaint.

12. State Defendants are without sufficient information to admit or deny the allegations in the first sentence. The second sentence is admitted to the extent it is alleged that Thomas Searles was an employee of YDC, but State Defendants are currently without sufficient information to admit or deny that he was an employee of YDC at all times relevant to the allegations in the Complaint.

13. State Defendants are without sufficient information to admit or deny these allegations.

14. Admitted that the Court has personal jurisdiction over the State Defendants. Otherwise, denied.

15. Admitted.

16. Admitted.

17-31. These allegations have been dismissed. Additionally all references to a class, or the class plaintiffs or class members throughout the Complaint have been dismissed, and State Defendants therefore make no further response with respect to such references. Answers admitting matters which contain a reference to a class as well as the individual Plaintiff are admitted only with respect to the individual Plaintiff.

32. Admitted.

33. Admitted that starting in approximately fifth grade, Plaintiff ran away from home multiple times. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

34. State Defendants are without sufficient information to admit or deny these allegations.

35. Admitted that Plaintiff committed a number of burglaries and was apprehended by the police on multiple occasions during 1995. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

36. Admitted.

37. Admitted.

38. Admitted that in October 1995 David was being transported between the Rochester District Court and the Youth Detention Services Unit (“YDSU”) in Concord, New Hampshire by the Strafford County Sheriff’s Department and escaped. Denied that he remained on the run for two weeks. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

39. Denied.

40. State Defendants are without sufficient information to admit or deny these allegations.

41. Admitted that Plaintiff had regularly scheduled furloughs from March through June, 1996. Admitted that Plaintiff was subject to a disciplinary action for failing to report the presence of smoking and cigarette lighters in the main kitchen in May, 1996. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

42. The first sentence is admitted. State Defendants are without sufficient information to admit or deny the allegations in the second sentence.

43. Admitted that Plaintiff returned to YDC on August 9, 1996. Otherwise, denied.

44. Admitted.

45. State Defendants are without sufficient information to admit or deny these allegations.

46. State Defendants are without sufficient information to admit or deny these allegations.

47. State Defendants are without sufficient information to admit or deny these allegations.

48. State Defendants are without sufficient information to admit or deny these allegations.

49. State Defendants are without sufficient information to admit or deny these allegations.

50. State Defendants are without sufficient information to admit or deny these allegations.

51. State Defendants are without sufficient information to admit or deny these allegations.

52. State Defendants are without sufficient information to admit or deny these allegations.

53. Admitted that Plaintiff was disciplined on January 16, 1997 for, in part, not following a teacher directive. Admitted that Plaintiff assaulted another YDC resident on January 22, 1997. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

54. State Defendants are without sufficient information to admit or deny these allegations.

55. Admitted.

56. Admitted.

57. Admitted, except for the allegation that Buskey, Murphy and Woodlock were Plaintiff's "direct care and treatment team." State Defendants are without sufficient information to admit or deny that allegation.

58. Admitted that Plaintiff was permitted to leave the campus to play basketball. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

59. Admitted.

60. Admitted that Plaintiff was consequenced with 5 (not ten) days of room confinement for fighting on September 11, 1997. The second sentence is admitted.

61. State Defendants are without sufficient information to admit or deny these allegations.

62. State Defendants are without sufficient information to admit or deny these allegations.

63. State Defendants are without sufficient information to admit or deny these allegations.

64. State Defendants are without sufficient information to admit or deny these allegations.

65. State Defendants are without sufficient information to admit or deny these allegations.

66. State Defendants are without sufficient information to admit or deny these allegations.

67. State Defendants are without sufficient information to admit or deny these allegations.

68. State Defendants are without sufficient information to admit or deny these allegations.

69. The first sentence is admitted. The second sentence is admitted except for the allegation that Plaintiff was to be reevaluated by cottage staff, which is denied. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

70. Admitted that Plaintiff was returned to YDC on January 3, 1998. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

71. State Defendants are without sufficient information to admit or deny these allegations.

72. State Defendants are without sufficient information to admit or deny these allegations.

73. State Defendants are without sufficient information to admit or deny these allegations.

74. Admitted.

75. Admitted that Plaintiff asked to see a nurse on April 20, 1998. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

76. State Defendants are without sufficient information to admit or deny these allegations.

77. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

78. State Defendants are without sufficient information to admit or deny these allegations.

79. State Defendants are without sufficient information to admit or deny these allegations.

80. State Defendants are without sufficient information to admit or deny these allegations.

81. Admitted.

82. Admitted that Plaintiff was taken to Elliot Hospital on September 12, 1998. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

83. Admitted.

84. The first sentence is admitted. State Defendants are without sufficient information to admit or deny the remainder of these allegations.

85. Admitted that Plaintiff turned 18 in 1999. Denied that he was in YDC's custody at that time.

86. State Defendants are without sufficient information to admit or deny these allegations.

87. State Defendants are without sufficient information to admit or deny these allegations.

88. State Defendants are without sufficient information to admit or deny these allegations.

89. State Defendants are without sufficient information to admit or deny these allegations.

90. State Defendants are without sufficient information to admit or deny these allegations.

91. State Defendants are without sufficient information to admit or deny these allegations.

92. State Defendants are without sufficient information to admit or deny these allegations.

93. State Defendants are without sufficient information to admit or deny these allegations.

94. Admitted that from 2017 to present, individuals other than Plaintiff have made allegations of abuse related to YDC. State Defendants are without sufficient information to further admit or deny this allegation.

95. State Defendants are without sufficient information to admit or deny these allegations.

96. State Defendants are without sufficient information to admit or deny these allegations.

97. State Defendants are without sufficient information to admit or deny these allegations.

98. State Defendants are without sufficient information to admit or deny these allegations.

99. Denied that YDC intentionally concealed information from law enforcement authorities or “gaslighted” Plaintiff. Denied that such acts by the individual defendants, if they occurred, were the acts of YDC. State Defendants are otherwise without sufficient information to admit or deny these allegations.

100. State Defendants are without sufficient information to admit or deny these allegations.

101. State Defendants are without sufficient information to admit or deny these allegations.

102. State Defendants are without sufficient information to admit or deny these allegations.

103. This allegation is a legal conclusion to which no response is required.

104. Admitted.

#### Count I

105. State Defendants repeat, reallege and incorporate by reference each and every answer to the factual allegations set forth in the preceding Paragraphs as though fully and completely set forth here.

106. State Defendants are without sufficient information to admit or deny these allegations.

107. State Defendants are without sufficient information to admit or deny these allegations.

108. Denied.

109. Denied.

110. Denied.

#### Count II

111. State Defendants repeat, reallege and incorporate by reference each and every answer to the factual allegations set forth in the preceding Paragraphs as though fully and completely set forth here.

112. The first sentence is denied. The second sentence is admitted.

113. Denied.

114. Denied.

### Count III

115. State Defendants repeat, reallege and incorporate by reference each and every answer to the factual allegations set forth in the preceding Paragraphs as though fully and completely set forth here.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

### Counts IV and V

120-132. These allegations do not pertain to the State Defendants.

### Count VI

133. State Defendants repeat, reallege and incorporate by reference each and every answer to the factual allegations set forth in the preceding Paragraphs as though fully and completely set forth here.

134. The first sentence is denied. The second sentence is admitted.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

### Count VII

139. State Defendants repeat, reallege and incorporate by reference each and every answer to the factual allegations set forth in the preceding Paragraphs as though fully and completely set forth here.

140. Denied.

141. Denied.

142. Admitted.

143. Denied.

144. The first sentence is denied. The State Defendants are without sufficient information to admit or deny the allegations in the second sentence.

145. Denied.

146. State Defendants are without sufficient information to admit or deny these allegations.

147. State Defendants are without sufficient information to admit or deny these allegations.

148. State Defendants are without sufficient information to admit or deny these allegations.

149. State Defendants are without sufficient information to admit or deny these allegations.

150. These allegations are legal conclusions to which no response is required.

151. Denied.

#### Count VIII

152-158. This Count has been dismissed.

159. No response is required to the Plaintiff's jury demand.

#### AFFIRMATIVE DEFENSES

State Defendants assert the following matters in defense and avoidance of the Plaintiff's claims:

The claims are barred by governmental immunity, including sovereign immunity, official immunity, vicarious official immunity, qualified immunity, and/or discretionary function immunity;

The claims are barred by the plaintiff's failure to give notice as required by RSA 541-B:14, IV, which has substantially prejudiced the State Defendants' ability to defend this action;

The claims are barred by limitations and/or laches;

The claims are barred in whole or in part by the doctrines of contributory negligence, estoppel, waiver and/or a failure to mitigate damages;

The claims are barred in part because the actions in question were privileged, justified or excused as necessary to maintain order and discipline and/or to protect and preserve the safety and security of the facility and its staff and residents; and

The plaintiff may not recover against the State Defendants due to a superceding or intervening cause of the plaintiff's damages.

WHEREFORE, the State Defendants respectfully pray:

- (A) That the Plaintiff take nothing by way of his claims against them;
- (B) That upon trial, the Court enter judgment in favor of the State Defendants and against the Plaintiff; and
- (C) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

**STATE OF NEW HAMPSHIRE,  
DEPARTMENT OF HEALTH AND HUMAN  
SERVICES; Kerrin Rounds, Acting  
Commissioner of DHHS; DIVISION OF  
JUVENILE JUSTICE SERVICES; DIVISION**

