

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

David Meehan, on behalf of himself and all
others similarly situated,

Plaintiffs,

vs.

State of New Hampshire, Department of Health
and Human Services (“DHHS”), Kerrin Rounds,
Acting Commissioner of DHHS, Division of
Juvenile Justice Services (“DJJS”), Division of
Children, Youth, and Families (DCYF”),
Sununu Youth Services Center (“SYSC”), f/k/a
Youth Development Center (“YDC”),
Jeffrey Buskey, Stephen Murphy, James Woodlock,
Frank Davis, Richard Brown, Thomas Searles, and
John and Jane Does 1-100,

Defendants.

Civil Action No. 217-2020-CV-
00026

**PLAINTIFF’S SURREPLY TO
STATE DEFENDANTS’ REPLY
TO PLAINTIFF’S OBJECTION
TO STATE DEFENDANTS’
MOTION TO DISMISS**

RILEE & ASSOCIATES, P.L.L.C.
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NOW COMES the plaintiff, David Meehan, on behalf of himself and all others similarly situated by and through their attorney, Rilee & Associates, P.L.L.C., and respectfully submits the following Plaintiff’s Surreply To State Defendants’ Reply To Plaintiff’s Objection To Defendants’ Motion To Dismiss, stating in support thereof as follows:

1. With respect to the additional arguments set forth in the state defendants’ reply, the plaintiff reiterates that the defendants’ so-called motion to dismiss the class allegations is not only the wrong procedural mechanism but is also premature, for all of the reasons stated in his objection.

2. With respect to Count VIII, the violation of the plaintiff's right to an education under the New Hampshire Constitution, the New Hampshire Supreme Court has identified this right as "...at the very least an important, substantive right." Claremont School District v. Governor, 138 N.H. 183, 192 (1993). Contrary to the state defendants' argument, Claremont does not limit the enforcement of this right to that of individuals acting on behalf of the public. Indeed, were that the case, then the plaintiff, and the entire class of putative plaintiffs, would be left without a remedy for the violation of this important, substantive right.

3. Finally, by quoting only a fragment of plaintiff's argument¹, the state defendants misrepresent plaintiff's characterization of the "reasonable person" standard. Read in context, plaintiff's statement that the "reasonable person" standard is not a "blanket objective rule" refers to the well-established legal principle that the standard is a reasonable person under the circumstances. (Plaintiff's Objection at p. 12, citing Ouellette v. Beaupre, 977 F.3d 127, 137 (1st Cir. 2020)). In New Hampshire, the discovery rule is defined in terms of the plaintiff, rather than the hypothetical "reasonable person," thus incorporating the "reasonable person under the circumstances" standard into the person of the plaintiff. (E.g, "A cause of action will not accrue under the discovery rule until the plaintiff discovers or in the exercise of reasonable diligence should have discovered not only that he has been injured but also that his injury may have been caused by the defendant's conduct." Raymond v. Eli Lilly & Co., 117 N.H. 164, 171 (1977)(emphasis added); Big League Entm't, Inc. v. Brox Indus., 149 N.H. 480, 485, (2003)). The "plaintiff" in the discovery rule, as phrased in this way, incorporates the "reasonable person under the circumstances" standard; it is a reasonable person in the circumstances faced by the plaintiff.

¹ Defendants' reply at p. 6.

4. Plaintiff believes that the remainder of defendants' arguments have been fully addressed in plaintiff's objection.

WHEREFORE, the plaintiff respectfully requests that this Honorable Court:

- A. Deny State Defendants' Motion to Dismiss;
- B. In the alternative, grant the plaintiff leave to amend the Complaint; and
- C. Grant such other and further relief as the Court deems equitable and just.

Respectfully Submitted,

**DAVID MEEHAN, BOTH INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

By His Attorneys,

RILEE & ASSOCIATES, P.L.L.C.

Date: March 4, 2021

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Date: March 4, 2021

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff's Surreply to State Defendants' Reply to Plaintiff's Objection to State Defendants' Motion to Dismiss has been served via New Hampshire E-Court Electronic Services upon all counsel of record.

Date: March 4, 2021

By: /s/ Cyrus F. Rilee, III
Cyrus F. Rilee, III, Esq., #15881