

Clerk's Notice of Decision
Document Sent to Parties

on 12/12/2022

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

12-9-2022 ROCKINGHAM, SS.

CASE NO. 217-2020-CV-00026

GRANTED AS FOLLOWS:

1. The hearing shall not be scheduled between 1/16 and 1/24, but shall be scheduled after 1/12. The hearing may need to be scheduled in February given the limited amount of available days in January.

DAVID MEEHAN



Honorable Andrew R. Schulman
December 12, 2022

v.

STATE OF NEW HAMPSHIRE,
DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.

2. The hearing shall be scheduled for three hours, because the court wishes to hear oral arguments on the pending motions to dismiss the Master Complaint, and there may be much to discuss about case structuring.

(IN RE YDC and YDSU CONSOLIDATED LITIGATION)

PLAINTIFFS' PARTIALLY ASSENTED-TO MOTION TO CONTINUE STATUS CONFERENCE

(For all Plaintiffs represented by Rilee & Associates, P.L.L.C. and Nixon Peabody LLP)

Plaintiffs,¹ by and through counsel, submit this Assented-To Motion to Continue the in-person Status Conference currently set for Wednesday, December 14, 2022, to a date on or after Thursday, January 12, 2022. In support thereof, Plaintiffs state as follows:

1. The Court has scheduled an In-Person Status Conference for next week—December 14, 2022. *See* Court's Order, November 21, 2022. For the reasons that follow, Plaintiffs, State Defendants, and several other parties, agree that it would be more helpful to the parties to hold a status conference in January 2023 rather than next week.

2. Pursuant to a Court Order dated September 19, 2022, State Defendants have filed two motions to dismiss Plaintiffs' Master Complaint. As the parties have twice extended the briefing schedule by agreement, the last filing in this series of motions to dismiss will be due

¹ For purposes of this motion, "Plaintiffs" means all Plaintiffs in this consolidated litigation represented by Rilee & Associates, P.L.L.C. and Nixon Peabody LLP.

(assuming the Court grants the currently pending motion to enlarge the schedule) on January 9, 2023.

3. Currently, the parties on both sides are focused on briefing the State's motions to dismiss the Master Complaint and have concurred that a Status Conference will be more helpful and efficient in January 2023, once the briefing is completed on January 9.

4. Plaintiffs are also presently focused on serving previously filed complaints as well as filing and serving new complaints.

5. Plaintiffs have begun serving Contractor Defendants, including Mount Prospect Academy ("MPA"), Nashua Children's Home ("NCH"), NFI North, Inc. ("NFI"), and Easter Seals New Hampshire, Inc. ("Easter Seals") (collectively "Contractor Defendants").

6. Over the next month, Plaintiffs anticipate completing service of process upon numerous additional Contractor Defendants.

7. One Contractor Defendant, MPA filed a motion to dismiss in one case. MPA will also be served in another dozen cases over the next few weeks. Additionally, Plaintiffs have agreed with Easter Seals and NCH that they need not respond in their cases until late January.

8. Plaintiffs anticipate many, if not all, Contractor Defendants will file motions to dismiss following service of complaints upon them. Those motions to dismiss will likely raise at least some similar arguments. Accordingly, in the interest of efficiency, some form of coordinated briefing may be appropriate.

9. At the Status Conference, Plaintiffs intend to discuss with Judge Schulman whether to employ a coordinated briefing schedule for the Contractor Defendants' forthcoming motions to dismiss. However, as of today, most Contractor Defendants have not yet been served.

10. Plaintiffs anticipate that, over the next month, they will have made substantial progress on service on Contractor Defendants, and it will be more appropriate, at that time, to discuss a coordinated briefing schedule for those cases, as counsel for those defendants will be able to appear at the Status Conference.

11. Moreover, in the Court's Notice of Decision on December 8, 2022, Judge Schulman noted that the Motion to Sever (Index # 115) will be addressed at the Status Conference. This issue will likewise be addressed most efficiently following the completed motion to dismiss briefing.

12. Additionally, while Plaintiffs and State Defendants have had some differences with respect to discovery, at the present moment there is no ripe issue that requires the Court's attention. Again, it is more likely that a status conference in January 2023 will be better timed to assist the resolution of any discovery disputes.

13. Plaintiffs have consulted with counsel for State Defendants who assent to the relief requested.

14. Plaintiffs have also consulted with counsel for other plaintiffs as well as the counsel for the Contractor Defendants who have appeared thus far. As of the time of this filing, counsel for the following parties have indicated assent to the relief requested: NCH; plaintiffs represented by Shaheen & Gordon, P.A.; plaintiffs represented by Douglas, Leonard & Garvey, P.C.; and plaintiffs represented by Stachowske Law, PLLC.

15. Counsel for Easter Seals has not assented, although it appears that she is only withholding assent due to potential scheduling conflicts in January 2023. In particular, counsel for Easter Seals indicates that she is unavailable between January 16 and January 24, 2023. Presumably if the Court schedules the status conference on January 12 or 13, or after January 24, counsel for Easter Seals will be able to attend.

16. This continuance will result in no prejudice to the other parties and will not result in the continuance of any other court-ordered deadline.

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Continue the Status Conference currently scheduled for December 14, 2022, for approximately one month, until January 12, 2023, or the earliest date thereafter as the Court's schedule allows; and
- B. Grant any other relief as is just and fair.

Respectfully submitted,

PLAINTIFFS

Dated: December 9, 2022

By and through counsel,

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

NIXON PEABODY LLP

/s/ Cyrus F. Rilee, III

Cyrus F. Rilee, III, Esq. (Bar No. 15881)
Laurie B. Rilee, Esq. (Bar No. 15373)
264 South River Road
Bedford, NH 03110
T: 603.232.8234
crilee@rileelaw.com
lrilee@rileelaw.com

/s/ David A. Vicinanza

David A. Vicinanza, Esq. (Bar No. 9403)
W. Daniel Deane, Esq. (Bar No. 18700)
Mark Tyler Knights, Esq. (Bar No. 264904)
Kierstan Schultz, Esq. (Bar No. 20682)
Nathan Warecki, Esq. (Bar No. 20503)
Erin S. Bucksbaum, Esq. (Bar No. 270151)
Allison Regan, Esq. (Bar No. 272296)
900 Elm Street, 14th Floor
Manchester, NH 03101
T: 603-628-4000
dvicinanza@nixonpeabody.com
ddeane@nixonpeabody.com
mknights@nixonpeabody.com
kschultz@nixonpeabody.com
nwarecki@nixonpeabody.com
ebucksbaum@nixonpeabody.com
aregan@nixonpeabody.com

CERTIFICATE OF SERVICE

I certify that on December 9, 2022, I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts (e-mail addresses) in this case.

/s/ David A. Vicinanzo _____
David A. Vicinanzo, Esq.