

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
NORTHERN DISTRICT

SUPERIOR COURT

CRYSTAL SOREY, Individually and
As Administratrix of the Estate of Harmony Montgomery

v.

STATE OF NEW HAMPSHIRE, Department of Health and Human Services
Division of Children, Youth, and Families (“DCYF”)

#216-2024-CV-00722

SECOND AMENDED COMPLAINT
Jury Trial Demanded

NOW COMES the plaintiff, Crystal Sorey¹, both individually and as Administratrix of the Estate of Harmony Montgomery, by and through her attorneys, Douglas, Leonard & Garvey, P.C., and respectfully submits the following Complaint and Demand for Jury Trial, stating in support thereof as follows:

PARTIES

1. The plaintiff, Crystal Sorey (hereinafter “Crystal”), is an individual who resides in the Commonwealth of Massachusetts² and is the biological mother of the decedent minor child, Harmony Montgomery (hereinafter “Harmony”) who, at all times relevant to the allegations contained herein, was a resident of Manchester, New Hampshire. Crystal has been appointed the Administratrix of the Estate of Harmony Montgomery, #316-2024-ET-00225 (9th Circuit, Probate

¹ Pursuant to In Re N.B., 169 N.H. 265 (2016) and T.C., *et al.* v. State of New Hampshire, *et al.*, #216-2016-CV- 00743 (Hillsborough North, April 12, 2017 (Abramson, J.)), Crystal hereby waives any applicable confidentiality provisions of RSA 169-C:25 and RSA 170-G:8-a for the express purpose of publicly exposing DCYF’s failures that caused Harmony’s death to prevent future tragedies by promoting systemic changes within DCYF.

² Plaintiff filed a Motion to Supplement Complaint and Demand for Jury Trial contemporaneously with the original Complaint which was granted and whereby her address shall remain *under seal*.

Division - Nashua).

2. Defendant State of New Hampshire, Department of Health and Human Services, Division of Children, Youth, and Families is a New Hampshire state administrative agency with mailing address of 129 Pleasant Street, Concord, New Hampshire 03301 (hereinafter “DCYF”).

JURISDICTION AND VENUE

3. This Honorable Court may properly exercise personal jurisdiction over the defendant because, at all times relevant to the allegations contained herein, the defendant was an agency of the State of New Hampshire, committed tortious acts in the State of New Hampshire, and/or was otherwise transacting business within or receiving money from within the State of New Hampshire.

4. Pursuant to RSA 491:7, this Honorable Court has subject-matter jurisdiction over this action because this is a civil action arising out of acts that occurred in the State of New Hampshire.

5. Pursuant to RSA 507:9, this Honorable Court is a proper venue for this action because, at all times relevant to the specific allegations contained herein, the decedent and the defendant were both residents of the County of Hillsborough, State of New Hampshire.

FACTUAL ALLEGATIONS

6. Harmony was born on June 7, 2014 to Crystal and Adam Montgomery (hereinafter “Adam”).

7. On information and belief, at the time of Harmony’s birth, Adam was in prison in Massachusetts where he remained until September 2015, at which time he moved to New

Hampshire.

8. Between her birth and February 2019, Harmony resided in Massachusetts with Crystal.

9. On information and belief, during the time that Harmony was living in Massachusetts, the Massachusetts Department of Children and Families (hereinafter “Mass DCF”) removed Harmony from the home due to allegations of neglect, and Harmony was placed in foster care.

10. On or about December 19, 2018, Mass DCF, pursuant to the Interstate Compact for the Placement of Children (hereinafter “ICPC”), requested that DCYF perform a Home Study on Adam. On information and belief, the Mass DCF was seeking the Home Study preparatory to placing Harmony with Adam and his wife Kayla Montgomery (hereinafter “Kayla”), who were living in Manchester, New Hampshire.

11. On information and belief, on or about December 20, 2018, DCYF sent an email to the Mass DCF seeking additional information prior to conducting a Home Study.

12. On information and belief, despite the fact that DCYF did not receive the requested information, DCYF failed to follow-up with Mass DCF to determine whether such additional information was forthcoming and/or to determine whether Mass DCF was continuing with its plans to place Harmony in Adam’s Manchester, New Hampshire home.

13. On or about February 22, 2019, a Massachusetts court awarded custody of Harmony to Adam.

14. On information and belief, shortly after Adam was awarded custody of Harmony, Harmony moved into Adam’s home in Manchester, New Hampshire. At that time, Adam’s household consisted of his wife, Kayla, and Adam and Kayla’s two sons: two-year old S.M. and

an infant, D.M.

15. On information and belief, the house in which Adam and his family were living was owned by his grandmother, Helen Montgomery (hereinafter “Helen”).

16. On information and belief, when someone calls DCYF to report suspected abuse or neglect of a child, that call is made to “Central Intake.”

17. Pursuant to DCYF Policy 1150, in effect at all relevant times, the Intake Unit “serves the critical role of determining whether reports meet DCYF criteria for child abuse and neglect assessment...It also establishes how these contacts are to be classified, documented, and referred for further action or services, if appropriate.”

18. DCYF’s duties have been considered by our courts:

The Court, as have other jurisdictions around the country, have the view that the legislature has created a duty flowing to children that have been specifically identified to DCYF, as potentially abused or neglected, per the Child Protection Act. The Child Protection Act states that its main function is ‘[p]rotecting the safety of the child;’ which includes ‘[t]ak[ing] such action as may be necessary to prevent abuse or neglect of children.’ RSA 169-C:2, I. Through this statute, the legislature has charged DCYF with taking necessary actions to prevent child abuse and neglect.

See Order, C.M., a/p/n/f of M.M. and J.M. v. State of NH, et al., Case No. 217-2019-CV-00677 (August 27, 2021, Judge Kissinger); see also Order, Christopher Willott, Individually and as Administrator of the Estate of Sadence Willott v. State of NH, DHHS, DCYF, Case No. 216-2018-CV-00605 (July 14, 2021, Judge Anderson) (“the court finds a special relationship existed between the defendant and Sadence that gave rise to a common law cause of action for defendant’s failure to perform its duties with reasonable care,” and “further, it was clear that Sadence was a member of the class of individuals that RSA 169-C:34 was designed to protect, and she suffered the harm the statute was designed to prevent”).

19. From the time Harmony was in Adam's care in New Hampshire, Crystal relied on DCYF to comply with its statutory duties to protect Harmony from abuse and neglect. Given that Harmony was in Adam's care in New Hampshire, Crystal had no means of knowing that Harmony was being abused and neglected as the result of DCYF's negligence.

20. DCYF Policy 1150 also states, in relevant part: "DCYF is committed to the support of families to ensure the protection of children and the communities in which they live. The Intake Unit serves the critical role of determining whether reports meet DCYF criteria for child abuse and neglect assessment... 'Credible Report' means the reporter provides information that identifies a child or children by name or location and allegations, which if true, constitutes harm or a threat of harm to the life, health, or welfare of the victim of the report. The information needs only to be within the range of possibility or probability and to appear to be grounded in fact.

21. Pursuant to RSA 169-C:34,II, for each report it receives DCYF must perform a child protective investigation to, among other things, "...determine whether there is probable cause to believe that any child in the family is abused or neglected, including a determination of harm or threatened harm to each child, the nature and extend of present or prior injuries, abuse or neglect, and any evidence thereof, and a determination of the person or persons apparently responsible for the abuse or neglect" as well as determine the immediate and long term risks to the child and any protective and ameliorative services "...that appear necessary to help prevent further child abuse or neglect and to improve the home environment and the parents' ability to adequately care for the children."

Report #1 to DCYF on July 29, 2019

22. On or about July 29, 2019, DCYF received an anonymous report alleging neglect and physical abuse of Harmony. This report was opened in DCYF's records as Assessment 826330 as a Level 1 priority. Harmony was identified as an alleged victim with Adam and Kayla Montgomery identified as the alleged perpetrators.

23. Although the Assessment notes the reporter as anonymous, Kevin Montgomery (hereinafter "Kevin"), Adam's uncle, is the reporter based on the information provided to DCYF, including that, on returning to New Hampshire from Florida on July 22, 2019, the reporter had observed that five-year-old Harmony had a "shiner." According to the report, Adam had said that he had left Harmony alone with baby D.M. while he went to the bathroom. While there, D.M. began to cry and Harmony put her hand over D.M.'s mouth. In response, Adam had "beaten the dog shit out of her."

24. The reporter also stated that the electricity for the home had been shut off, there was a generator powering the air conditioner in the living room, and the premises were filthy.

25. The reporter had also seen a bent spoon in the house that he believed was drug paraphernalia and expressed concern that Adam, a former drug user, had relapsed.

26. Following this report, the Assessment was assigned to a child protection social worker (hereinafter "CPSW"), Demetrios Tsaros (hereinafter "Tsaros").

27. The Attorney General's Office Protocols, along with various statutory provisions set forth in Chapter 169-C, identify DCYF as the state agency legally mandated to assess reports of child abuse and neglect. To that end, the primary purpose of Chapter 169-C, aptly named The Child Protection Act, is to "provide protection to children whose life, health or welfare is endangered." See RSA 169-C:2, I.

28. More specifically, “if it appears that the immediate safety or well-being of a child is endangered...or the facts otherwise so warrant, [DCYF] shall commence an investigation immediately after receipt of a report. In all other cases, a child protective investigation shall be commenced within 72 hours of receipt of the report.” See RSA 169-C:34, I.

29. This statutory mandate is echoed in DCYF Policy 1171, stating that the investigation required under RSA 169-C:34 is referred to as an “Assessment” in DCYF policies, and the primary goal of an Assessment is to “ensure the safety of the child(ren).”

30. Further, DCYF “shall promptly,” among other things: 1) determine whether there is “**probable cause**” to believe a child in the household is abused or neglected; 2) determine the immediate and long-term risk to each child if the child remains in the household, and 3) determine the treatment and services needed to prevent further abuse or neglect. RSA 169-C:34, II(c) – (e). Because erring on the side of caution is essential where helpless children are concerned, the “probable cause” standard is not exacting. Probable cause exists where “facts and circumstances based upon accurate and reliable information, including hearsay, ...would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected”

31. Where such probable cause exists, DCYF must carry out its child protection duties as set forth in RSA Chapter 169-C.

32. Given the obligations and duties imposed on DCYF by statute and policies detailed herein, a special relationship existed between DCYF and Harmony and the other children in the household as members of the class of individuals that Chapter 169-C was designed to protect.

33. All DCYF policies cited herein were in effect at the relevant times.

34. Per Policy 1003, “Policy Manual Preamble,” DCYF adopted a Policy Manual “to provide the best possible service to...the public” and “to identify the base requirements that staff

must adhere to and the standards that represent meeting nationally recognized best practice.” As such, DCYF staff are expected to (a) follow all mandates under state and federal law, (b) meet best practice expectations, and (c) use common sense in order to address the unique circumstances presented in each case.

35. DCYF Policy 1171 provides, in relevant part, that “the alleged victim will be interviewed in person by a CPSW according to the priority levels and timeframes listed below. A Level I assessments require face-to-face contact with the alleged victim within 24 hours, excluding weekends and holidays...” (emphasis added).

36. DCYF Policy 1201, in effect at all relevant times, states, in relevant part: “All children in the household must be met or observed by the CPSW to help assess the validity of the referral and to make a determination about whether they are in imminent danger...The CPSW must consider the following when interviewing a child victim: B. Questions and discussions are to be kept in simple language appropriate for the child's age and level of development. Be aware of what is considered normal childhood behavior for various ages and assess the child's overall understanding of the situation. C. Questions must be non-leading and open-ended. The child must not be pressed for answers or details. Non-verbal materials such as drawings or puppets may be used. D. Assess the child's speech and language skills, mental abilities, and motor skills...Information to be obtained from the child, if possible, includes A. Time, date, and place of occurrence. With young children, dates and times may be more easily related to television shows, holidays, or seasons. B. Who was involved, C. How the incident occurred; D. Frequency or duration; E. A description of the incident of abuse or neglect. Age-appropriate techniques, such as nonverbal materials, or anatomically correct drawings, may be used, and F. Whether other household members were present, and if not, where the child believes they were. Alleged injuries must be observed and documented.”

37. On information and belief, for each assessment there is a “Contact Log” recording contacts between DCYF personnel and others that occur during the course of the assessment.

38. On the morning of July 29, 2019, Tsaros made an unannounced visit to the Montgomery household.

39. Tsaros reported in the Contact Log for this assessment that he saw Adam and Harmony as they were leaving the premises. He noted that he “briefly” saw Harmony and did not “observe any concerns.”

40. On information and belief, Tsaros observed Harmony only from a distance as she was leaving the premises with her father, and therefore failed to see the injury to her eye.

41. Tsaros falsely reported his observation of Harmony as “face to face” and he failed to comply with DCYF’s policy requiring face-to-face contact with the alleged victim within 24 hours.

42. Tsaros also noted that he recognized Adam from “prior contacts.” On information and belief, Tsaros had known Adam since he was 15 years old, when Adam was committed to the New Hampshire Youth Development Center (hereinafter “YDC”), where Tsaros was one of Adam’s youth counselors.

43. Notably, during a subsequent home visit nine days later, on August 7, 2019, Tsaros documented in the Contact Log that he observed a red mark in Harmony’s eye and faded bruising under her lower eyelid.

44. According to the Contact Log on July 29, 2019, Tsaros spoke to Kayla, who stated that she had been expecting a report to DCYF because a friend of theirs, Alex Call (hereinafter “Alex”), was staying with them in the home.

45. As reported in the Contact Log, Kayla told Tsaros that Alex, a drug user, had

recently relapsed, and that Adam's uncle had discovered Alex's drug paraphernalia. Tsaros asked Kayla where she and Adam go for their own continued drug treatment.

46. The Contact Log notes that Kayla also explained that the electricity had been turned off and Adam had gone to get fuel for the generator.

47. Tsaros noted in the Contact Log that the room was "a bit messy" and smelled of dog but was not "overpowering."

48. Tsaros noted in the Contact Log that he asked if he could return later that day to speak to Adam, but was told by Kayla that they would not be home. Tsaros gave her his card and suggested that "maybe" they could meet within the next couple of days.

49. CPSWs are trained on completing contact logs to document information and activity in an investigation and, in their training materials, are instructed that "If It Is Not Documented It Didn't Happen."

50. There is no indication in the Contact Log that Tsaros asked Kayla about the report that Adam had given Harmony a black eye.

51. Tsaros made no notation in the Contact Log of observing or speaking with Harmony beyond briefly seeing her getting into a vehicle leaving the home with Adam.

52. There is no notation in the Contact Log for this visit of Tsaros conducting any interview with Harmony or speaking to her in any way. On information and belief, Tsaros did not conduct the interview with Harmony as required by DCYF policies or otherwise speak with her in any way. The CPSW failed to assess Harmony's safety, as required by policy, from his car as he watched Adam and Harmony get into a car and drive away.

53. Following this visit, Tsaros noted in the Contact Log that he sent an email to the Manchester Police Department stating that "...I think you folks are all set. I saw the children and

did not observe any bruises, marks, etc...” Tsaros’ reasonably understood that his statement was false and an abject failure of the CPSW to follow DCYF’s policies, which deprived DCYF and the Manchester Police Department of the opportunity to learn facts related to the Assessment and Harmony’s safety.

54. As noted in the Contact Log, Tsaros called Adam later that afternoon. During that call, Tsaros and Adam discussed the drug paraphernalia found in the house, which Adam said belonged to Alex. Tsaros discussed his concerns about substance abuse and noted in the Contact Log that Adam reported that he and Kayla are “clean” and attend a clinic.

55. Tsaros failed to question Adam about the report that Harmony had a black eye, reportedly caused when Adam “beat the dog shit out of her.” Tsaros and Adam scheduled a meeting at the Montgomery home for August 1, 2019.

56. DCYF failed to notify Crystal of the report in violation of DCYF policy 1173, which provides that non-custodial parents “have a right to know if their child(ren)/youth are involved with DCYF.” The purpose of the policy is to engage the non-custodial parents during the Assessment Process.

Report #2 to DCYF on July 29, 2019

57. Later that day, July 29, 2019, DCYF received a report from Kevin Montgomery. This report was added to Assessment # 826330 as Additional Information Report # 826420.

58. DCYF Policy 1157, “Receiving Additional Information Regarding an Open Assessment,” states that a report of “Additional Information” should be used when a DCYF assessment is open and there is an incident or circumstance that is not one of abuse or neglect. The “Additional Information” is sent to the District Office as an associated referral.

59. Policy 1157 requires the CPSW to contact the reporter and discuss with a supervisor what action needs to be taken to address the Additional Information, which may include follow up interviews. The Assessment Supervisor must ensure that the CPSW has addressed the Additional Information and must document same in the contact log.

60. The Additional Information Report contained new allegations, including allegations of Harmony being spanked by Adam and verbally abused by Kayla Montgomery.

61. In this Report, Kevin stated that when he returned from a trip to Florida on July 22, he observed that Harmony had a “vibrant” black eye, with bruising on the bottom of her eyelid extending to the cheekbone, on the corner of her eye, on her nose and on her temple.

62. As noted in the Report, Kevin reported that he asked Adam what had happened, and Adam told him that he had left baby D.M. alone with Harmony while he went to the bathroom. D.M. began to cry; Harmony did not know what to do and “tried getting him to stop crying” by covering the baby’s mouth with her hand.

63. Kevin reported that Adam told him he had “bounced her off every fucking wall in this place, I explained to her why later.”

64. Kevin reported that Harmony was born legally blind.

65. Kevin also reported that at some point he had seen Adam and Kayla leaving the house with the two younger children. According to the Report, Kevin stated he went inside and found Harmony and a man who identified himself as Alex Call who said that he was a recently-relapsed drug abuser; Adam was letting him stay in the house. Alex then left, leaving Harmony alone with Kevin.

66. According to the Report, Kevin, not wanting to leave Harmony alone in the house, took her along while he ran some errands, texting Adam to let him know that he had Harmony with him. Adam responded that Harmony was being punished and that “She is never to leave that

fucking house under no circumstances.”

67. Kevin further reported witnessing Harmony being punished by being made to scrub the bathroom with a toothbrush.

68. The Report noted that Kevin reported that Harmony is spanked on her bottom several times a week.

69. Kevin also reported that Kayla calls Harmony “disgusting” and other names.

70. Additionally, Kevin reported that the electricity to the home had been shut off for non-payment and that any electricity was being provided by a small generator that is not sufficient to provide power for all of the household needs. As noted in the Report, Kevin stated that there was no hot water and the house was filthy both inside and out.

71. Kevin went on to report finding what appeared to be drug paraphernalia in the home.

72. The Report states that Kevin was seeking to know what was happening with his earlier report. According to the Report, Kevin became frustrated when informed that this information was confidential.

73. The Report notes that Kevin reiterated that he had returned home from Florida on July 22nd and stated that he had seen the bruise on Harmony on the 23rd.

74. As noted in the Report, the DCYF worker who took the call questioned Kevin “on the accuracy of his dates,” further frustrating Kevin, who said “...this is why children die” and that “this child was punched clear in the eye socket with full force.”

75. The report notes that Kevin questioned why the matters he was reporting were not “imminent danger” and asked why Harmony had not been interviewed. He ended the call by saying that he was going to call “every god damn day” until something was done.

Report #3 to DCYF on July 29, 2019

76. Also on July 29, 2019, DCYF received another report of suspected abuse of Harmony. The reporter is anonymous. This report was added to Assessment #826330 as Additional Information # 826484.

77. This report, containing new allegations of abuse of Harmony and the other children in the home, should have been screened in as a new assessment under DCYF Policy 1212. If the report had been properly screened in as a new assessment, a CPSW would have been required to conduct a home visit within 72 hours, interview Harmony, notify law enforcement of the allegations, conduct a safety assessment, and address the concerns with Adam. DCYF failed to take any of these steps in violation of its own policies and its statutory child protection duties.

Report #4 to DCYF on July 29, 2019

78. Again on July 29, 2019, DCYF received another anonymous report of suspected abuse of Harmony. This report was added to Assessment # 826330 as Additional Information #826492.

Report #5 to DCYF on July 30, 2019

79. DCYF received a report on July 30, 2019, and the reporter is identified as Kevin Montgomery. This report was added to Assessment # 826330 as Additional Information # 826530.

80. However, Kevin's report should have been screened in as an "Additional Allegation" report. DCYF Policy 1157 reserves "Additional Information" reports for use when something is reported that is not abuse or neglect related to an open assessment. Where Kevin's report contains information that plainly fits the definition of "child physical abuse" under Policy 1152, the report was not appropriately classified as "Additional Information" but, rather, should

have been screened in as an “Additional Allegation” report because it is a “new allegation of child abuse or neglect during [the] Assessment” per Policy 1158.

81. As noted in the Report, during this call Kevin again reported his observations about Harmony’s black eye, which he described as “like she was in a boxing match.” He provided new information about Harmony and inappropriate discipline as well as new allegations of physical discipline of one of the boys.

82. The Report notes that Kevin described how he had arrived at the home on July 24, 2019 to find that everyone but Harmony and Alex had left the home. Kevin stated that he had taken Harmony to Dunkin Donuts at approximately 4:00 p.m. to get something to eat, at which time Harmony told him that it was the first food she had had all day.

83. The Report notes that Kevin reported that, on one occasion, Adam had made Harmony stand in the corner for between five and eight hours because Adam felt he will “break Harmony” and that Harmony had been made to stay in bed from the time she woke up until 4:00 p.m. Kevin also reported his concerns that the other two children in the house were being neglected.

84. Kevin mentioned in this Report that Kayla’s son from a previous relationship would visit the home.

85. DCYF Policy 1205 states, in relevant part, “To help in the determination of whether neglect or abuse has occurred, the CPSW must make at least two collateral contacts during the course of the assessment. A collateral contact includes a contact with any individual within the community who can furnish information about the family. They may include schools, medical staff, social service agencies, hospitals, clinics, police, relatives and personal contacts such as friends, neighbors or landlords.”

86. On information and belief, Tsaros never contacted Kayla's son from an earlier relationship.

87. Tsaros noted in the Contact Log that he spoke to Kevin on July 30, 2019.

88. According to the Contact Log, Kevin, who became emotional at times, informed Tsaros that the Montgomery home was under foreclosure. Kevin again recounted having seen Harmony with a black eye, the messy condition of the home and the lack of electricity except for the generator.

89. In the Contact Log, Tsaros notes that he asked "specifically" about the "drug concerns." Kevin responded that he believed Adam had relapsed.

90. In the Contact Log, Tsaros makes no mention of asking "specifically" about Harmony's reported black eye.

91. The Contact Log notes that Kevin asked whether Tsaros thought that what he was telling Tsaros was serious, and Tsaros told him yes, and that he would be following up.

92. Later that day, according to the Contact Log, Tsaros spoke to Kevin's ex-girlfriend, "Christina." As noted in the Contact Log, she expressed many of the same concerns as Kevin.

Report #6 to DCYF on July 30, 2019

93. DCYF received yet another report on July 30, 2019, from "Pamela." This report was added to Assessment # 826330 as Additional Information # 826606.

94. As noted in the Report, Pamela also expressed many of the same concerns as Kevin, adding that when she was visiting the house for a couple of days, Adam would not let Harmony leave her room for the whole time on the grounds that she was being punished. Pamela reported seeing no food in the refrigerator, seeing drug paraphernalia, and that the generator powered only the refrigerator and air conditioning.

95. Pamela reported that “this girl is being physically abused and no one is doing anything about it.” She also notifies DCYF that Harmony is legally blind in one eye and needs glasses. On information and belief, Tsaros never contacted “Pamela,” in violation of DCYF policies.

96. The Contact Log states that on August 1, 2019, Tsaros received a call from Adam cancelling their scheduled home visit for that day. Adam said he would call back to reschedule the visit. Tsaros called Adam back the next day but was unable to reach him or leave a voicemail. This is also noted in the Contact Log.

Report # 7 to DCYF on August 2, 2019

97. DCYF received a report on August 2, 2019, alleging abuse of Harmony. The reporter is identified as “Christina,” and she is listed as a relative. This report was added to Assessment # 826330 as Additional Information # 826982.

98. According to the Report, in addition to reiterating the concerns previously raised about Harmony’s black eye, drug use in the home, the presence of Alex in the home and Adam’s having told Kevin that Harmony was not to leave the home and should have been left in the home alone. Christina reported that Harmony is being molested by people who stay in the home and use drugs. She stated that Harmony is legally blind and needs glasses, but Adam got rid of her glasses.

99. Although DCYF has received a significant amount of information on abuse allegations of Harmony by Adam during a 3 day period, DCYF violated its policies by failing to meet Harmony or interview Adam and Kayla.

100. On August 5, 2019, Tsaros recorded in the Contact Log that he had received information from the Manchester Police Department setting forth calls received by the police relating to the Montgomery home. Among that information was a report that on July 7, 2019 the

police had “trespassed” Alex Call from the property, and that the Manchester Police Department had received a call from a neighbor, who reported Adam and Kayla yelling at each other.

101. According to the Manchester Police Department Calls for Service log, on or about July 10, 2019, the Manchester Police Department received a call from someone identifying themselves as a neighbor of the Montgomerys, in which the caller reported hearing a male and female fighting inside the house. The caller also reported hearing banging and screaming and children.

102. According to the Contact Log, on August 5, 2019, Tsaros spoke to Adam and scheduled a home visit to take place on August 7, 2019, nine days after Kevin’s initial report of Harmony’s black eye.

103. According to the Contact Log, on August 7, 2019, Tsaros conducted a home visit.

104. On information and belief, between Kevin’s report of July 29, 2019 and August 7, 2019, Tsaros had no contact with Harmony other than observing her from a distance as she was leaving the home with Adam on July 29th.

105. According to the Contact Log, Tsaros paid a home visit to the Montgomery home on August 7, 2019.

106. Tsaros noted in the Contact Log that during the visit he raised his concerns about substance abuse and had Adam sign a release of information form for the methadone clinic he had been attending.

107. Additionally, Tsaros noted in the Contact Log that, with respect to Harmony’s eye injury, Adam claimed that her younger brother had hit her in the corner of her eye with a toy lightsaber.

108. Tsaros documented in the Contact Log that he spoke to Harmony “a bit, making small talk” while she was watching a movie.

109. DCYF Policy 1201 provided that “...Ideally, the child needs to be interviewed in a (neutral) uninfluenced, non-threatening, private, quiet place that is free from interruptions.”

110. On information and belief, Tsaros met with Harmony inside the home and did not note any effort to speak with Harmony in a private, quiet place with no distractions or interruptions. Additionally, Tsaros cannot assess Harmony’s safety because he met with Harmony with Adam present in the home, in violation of DCYF’s policies.

111. Tsaros noted in the Contact Log that he had observed a red mark in Harmony’s right eye and some faded bruising under her eyelid. These observations were made nine days after the first report to DCYF of Harmony’s black eye. Although Tsaros previously informed the Manchester Police Department on July 29, 2019, that he “did not observe any bruises, marks, etc.,” he failed to contact law enforcement to retract or update about Harmony’s injuries. There is no DCYF record that he contacted law enforcement about Harmony’s injuries after July 29, 2019.

112. According to the Contact Log, Harmony told Tsaros that her brother had hit her in the eye with a light saber.

113. DCYF policy 1152, then in force and effect, states, in part: "Bruises are usually classified by size, and some information can be determined by their appearance...One way to determine the approximate age of a bruise is by the color...."

114. On information and belief, Tsaros knew the passage of time between the first report of Harmony’s black eye on July 29, 2019 and his observation of her eye nine days later on August 7, 2019.

115. On information and belief, when Tsaros observed the remaining injuries to

Harmony's eye, he took no steps to determine whether bruising of this nature was consistent with Adam's explanation that she had been hit in the eye by a toy light saber approximately nine days earlier.

116. Tsaros documented in the Contact Log that he asked Harmony whether her eye still hurt, and she said no; whether she felt safe at home, and she said yes; whether anything had happened that made her feel scared or sad, and she said no; and whether her mom, dad or anyone else hurt her recently or ever, and she said no.

117. On information and belief, Tsaros conducted this interview in a public part of the home with others present and/or in the vicinity, including Adam as the alleged perpetrator, in violation of DCYF Policy 1201.

118. On information and belief, Tsaros failed to investigate other reports of abuse and neglect of Harmony. For example, Tsaros did not ask Harmony any questions related to the reports that she had been punished by being make to stand in the corner for hours, that she had been punished by being made to stay in her room for most of the day, or that she had been punished by being made to scrub the bathroom with a toothbrush.

119. On information and belief, Tsaros did not ask non-leading and open-ended questions as required by DCYF Policy 1201.

120. On August 8, 2019, Tsaros documented in the Contact Log that he spoke to someone at Adam's drug treatment clinic.

121. On August 8, 2019, according to the Contact Log, Kevin and Christina again called DCYF and spoke to a supervisor, expressing their concern that Adam had relapsed and was using heroin.

122. On August 8, 2019, Tsaros documented in the Contact Log that he had spoken to a

Dr. Morrison and had been told that "...the children are up to date medically with no concerns for a/n [abuse/neglect]."

123. However, the Contact Log notes that subsequently, on March 3, 2021, Dr. Morrison stated that she had never seen Harmony, although she had seen D.M. and S.M.

124. On information and belief, when Tsaros spoke to Dr. Morrison on August 8, 2019, he inquired about "the children," without using their names or specifying to which children he was referring, Tsaros then assumed that when Dr. Morrison was referring to all three children when she said that "the children" were up to date medically and that there were no concerns for abuse or neglect.

125. On information and belief, Tsaros never specifically inquired about whether Harmony was up to date medically and whether there were any concerns for abuse or neglect.

126. On information and belief, Tsaros never inquired whether Harmony had received medical treatment for the bruising around her eye.

127. On August 9, 2019, Tsaros recorded in the Contact Log that he had a "contentious" call with Kevin, in which Kevin expressed his continued concerns about Adam's drug use and said that he believed the children should be removed from the home.

Report # 8 to DCYF on August 15, 2019

128. DCYF received a report on August 15, 2019, a family friend called DCYF on behalf of Harmony's grandmother, Helen, to report her concerns for Harmony. This report was added to Assessment # 826330 as Additional Information # 828370.

129. As noted in the Report, the caller reiterated the concerns reported earlier regarding Harmony's black eye, reporting that Harmony is blind in one eye and is supposed to wear glasses. Helen also reported her concerns about Adam's drug use and Harmony being punished by having

to clean the toilet with a toothbrush. The reporter went on to state that she was worried that Harmony would "...end up like Bella, the little girl that was found dead on Dear Island...because she was beaten by a [sic] Mom's boyfriend."

130. The reporter provided new information about Adam having been in jail for 6-7 years for robbery and drug possession and that Kayla is afraid of Adam. Tsaros failed to explore domestic violence in the home.

131. This report was noted by Tsaros in the Contact Log. Tsaros wrote that he was aware of these concerns, had spoken with Adam's drug counselor and had seen the injury to Harmony's eye, which she said had been caused when her brother hit her in the eye with his toy lightsaber.

132. There is no DCYF documentation that Tsaros contacted the reporter, in violation of DCYF policies.

Report # 9 to DCYF on August 16, 2019

133. DCYF received a report on August 16, 2019. The reporter is identified as "Thelma." This report was added to Assessment # 826330 as Additional Information # 828484.

134. As noted in the Report, "Thelma" reported that she was concerned because the Montgomery house has no electricity and is instead using a small generator. She also reported that the yard was "deplorable" and the driveway was full of trash, leading her to wonder whether the inside of the home was safe for children.

135. Tsaros noted in his Contact Log that he was aware of the additional information reported, that he had visited the home and knew that a generator was in use because the electricity had been turned off. He stated that he had spoken with "collaterals" and had no present concerns.

136. There is no documentation that Tsaros contacted the reporter, in violation of DCYF policies.

Report # 10 to DCYF on August 22, 2019

137. DCYF received a report on August 22, 2019. The reporter is listed as a neighbor, named “Karryn.” This report was added to Assessment # 826330 as Additional Information # 829198.

138. Karryn reported safety conditions in the home because there are extension cords running into the house and that a generator was in use. She also reported that the fire department had been to the house over concerns the generator was too close to the home.

139. There is no DCYF documentation that Tsaros contacted the Board of Health or the Fire Department to determine the safety and habitability of the home. Additionally, in violation of DCYF policies, there is no record of Tsaros contacting the reporter as required.

Report # 11 to DCYF on August 23, 2019

140. DCYF received a report on August 23, 2019. The reporter is identified as “Thelma.” This report was added to Assessment # 826330 as Additional Information #829296.

141. According to the Report, Thelma reported her continuing concerns about the generator being the source of electricity in the home. She also reported hearing that two days earlier there had been a fight in the home, and something was thrown out of a window, breaking it, with glass all over the yar. She reported worrying that where the outside of the home was in an unkempt state the inside must be unclean as well.

142. The reporter commented “if we (DCYF) are waiting for children to die before something gets done.”

143. There is no DCYF documentation that Tsaros ever contacted the reporter, in violation of DCYF policy 1157.

Report # 12 to DCYF on September 11, 2019

144. DCYF received a report on September 11, 2019. The reporter is identified as Kevin Montgomery. This report was added to Assessment # 826330 as Additional Information #832006.

145. The Report noted that Kevin stated that he had called earlier to report suspected child abuse. He now reported that the Montgomery home had been foreclosed on and that the eviction process had commenced. He also reported that there is no electricity in the home so that there was no heat or hot water and that it is starting to get cold at night. Kevin expressed his concerns that there was insufficient food in the house. He reported that there was an unplugged refrigerator blocking the back door because the lock for the door was broken.

146. The intake worker made a notation in the Report that that according to Contact 3, Tsaros had met with the family and had seen the generator “which actually runs the stove, fridge and electricity in the home.”

147. On information and belief, “Contact 3” as referenced in the Report dates to a Contact Log entry that was made more than a month and a half earlier on July 29, 2019.

148. There is no DCYF documentation that Tsaros contacted the reporter or followed up in any way about the information provided in the report.

Report # 13 to DCYF on September 11, 2019

149. DCYF received a report on September 11, 2019. The reporter is identified as Helen. This report was added to Assessment # 826330 as Additional Information # 832022.

150. As noted in the Report, Helen reported that she owned the Montgomery home and had returned to the home that day, but that Adam would not let her in. Helen reported that the house is “in shambles.” She reported that there was no hot water, the refrigerator was barricading the back door because there was no lock, and that the home was filthy with a smell of urine.

151. As noted in the Report, Helen also reported having seen Harmony put in the corner for hours at a time. She reported that Harmony is blind in one eye and is supposed to wear glasses.

152. It is reported that “Harmony was not in school today,” but there is no record that Tsaros made any attempt to investigate this or follow up on the report that “drugs are being sold out of the house.”

153. Notably, DCYF notes that “** CPSW Tsaros told family he has known father since father was 15 years old and should not have been assigned.**”

154. Tsaros failed to contact Helen about this report, which is especially egregious because Helen called and left a message with Tsaros on August 1, 2019. She called to report her concerns and requested Tsaros to call her back.

155. By this report, DCYF had not met or seen Harmony since August 7, 2019, despite multiple new reports and more information provided about Adam’s parental capacities that needed to be assessed to ensure safety of the children but Tsaros never did in violation of DCYF policies.

Report # 14 to DCYF on September 12, 2019

156. DCYF received a report on September 12, 2019. The reporter is a professional reporter, Detective Sergeant Mike Bergeron (“Bergeron”) from Manchester Police Department. This report was added to Assessment # 826330 as Additional Information # 882124.

157. The Report notes that Bergeron reported that he had been called to the Montgomery home because there was an altercation regarding Kevin and Helen attempting to enter the home to retrieve personal items. While there, Bergeron noted there was “clutter in every room consisting of clothing and empty food containers.”

158. There is no DCYF documentation that Tsaros contacted the reporter as required under DCYF policies.

Report # 15 to DCYF on September 16, 2019

159. DCYF received a report on September 16, 2019. The reporter is identified as Kevin Montgomery. This report was added to Assessment # 826330 as Additional Information # 832644.

160. Kevin stated that he contacted DCYF because “nobody [from DCYF] called him” about his recent report. According to the Report, Kevin again reported his belief that Adam had resumed using drugs. He again reported that the generator is insufficient to run the hot water heater. Kevin also reported having spoken to Tsaros and feeling as though Tsaros was turning a blind eye to the situation. Kevin reported that Tsaros told him that he had known Adam since Adam was 15 and that Tsaros knew he was “not like this.”

161. On September 16, 2019, there is a note in the Contact Log that Rosemarie Boylan (hereinafter “Boylan”) spoke with Helen in response to her request for a call back. Helen voiced her concerns about Tsaros having known Adam for fifteen years. Boylan responded that “it was not on a personal level.”

162. According to the Contact Log, Helen reported that Harmony was supposed to have eye surgery and voiced her ongoing concerns about Harmony and about the children living in those conditions.

163. According to the Contact Log, Boylan also spoke to Kevin during her call with Helen, who voiced his concern that there is no heat or hot water in the home. Boylan informed him that those issues had been addressed and that “...right now you do not need heat in a home.”

164. On information and belief, on September 16, 2019, the temperatures in Manchester, New Hampshire dropped to 48 degrees overnight.

165. DCYF Policy 1151, effective at all relevant times, states in part that “(a) "Inadequate Shelter" means failure by the caregiver to provide or seek to provide shelter that is

safe, healthy, and sanitary, and which protects a child from the weather (1) Housing conditions, lack of heat or lack of shelter, are hazardous to the safety of a child...”

Report # 16 to DCYF on September 24, 2019

166. DCYF received a report on September 24, 2019. The reporter is identified as Crystal Sorey, called DCYF. This report was added to Assessment # 826330 as Additional Information # 834118.

167. This report was improperly screened in as Additional Information in violation of DCYF policies because Assessment # 826330 had been open since July 29, 2019, which is more than 45 days from the date of the open assessment.

168. As noted in the Report, in addition to Crystal reporting concerns for Harmony from Kevin Montgomery, she provided DCYF new allegations. She stated that Adam does not allow her to videochat with Harmony and does not permit contact between her and Harmony.

169. Crystal reported that Harmony has not been to school since living with Adam.

170. According to the Contact Log, on October 1, 2019, Tsaros made an unannounced visit to the Montgomery home. Adam and Kayla told him that the house had been foreclosed on and they were being evicted.

171. While there, Tsaros observed Harmony watching television and said “hi,” to which she responded “hi.” According to the Contact Log, this was the extent of Tsaros’ interaction with Harmony.

172. On information and belief, Tsaros never inquired about Harmony’s blindness in one eye or about the report that she was supposed to have surgery.

173. According to the Contact Log, later that day, Tsaros called Adam. Tsaros apologized for bothering him and asked why Harmony was not at school. Adam said he had tried

to enroll her in kindergarten and was told could not enroll her without proof that she was a New Hampshire resident. Tsaros accepted this excuse and made no effort to follow up or verify, despite DCYF Policy 1151 about educational neglect,

174. On information and belief, Tsaros did not question Adam's claim that he could not prove Harmony's residence in New Hampshire or verify with the school district. On information and belief, had Tsaros made any minimal effort, he would have realized that Adam's excuse was inaccurate because Adam had legal documents awarding Harmony's custody as well as the fact that Adam was receiving benefits on behalf of Harmony, which would have supported her residency.

175. DCYF made no effort to determine Harmony's enrollment status in school.

Report # 17 to DCYF on October 5, 2019

176. DCYF received a report on October 5, 2019. The reporter is identified as Kevin Montgomery. This report was added to Assessment # 826330 as Additional Information # 836102.

177. This report was improperly screened in as Additional Information in violation of DCYF policies because Assessment # 826330 had been open since July 29, 2019, which is more than 45 days from the date of the open assessment.

178. As noted in the Report, Kevin reported that he had been making reports to DCYF since July, and that was calling again now because there is still no heat or hot water in the house, and it has gotten colder. According to the Contact Log, on October 8, 2019, Tsaros spoke to Crystal. On information and belief, this is the first time Tsaros had any contact with Crystal.

179. During that call, Crystal told Tsaros that she had not been able to see or speak with Harmony because Adam makes it impossible to co-parent.

180. According to the Contact Log, Tsaros asked Crystal whether she received all of her information from Kevin. When she replied that she receives her information from Kevin, Kevin's

girlfriend and from Helen, Tsaros reassured her that he had conducted a thorough investigation and was attempting to close the report “soon.”

181. On information and belief, there is no documentation that Tsaros followed up on Adam’s reported refusal to co-parent with Crystal.

182. Although DCYF received at least 17 reports regarding Harmony’s safety, on October 17, 2019, Tsaros notified Adam by letter that DCYF determined Assessment # 82630 was “Unfounded” – 80 days after the Assessment was opened, in violation of DCYF policies.

183. DCYF Policy 1192, in effect at all relevant times, provides in part: “I. The immediate safety of the victim is of paramount importance. The Safety Assessment must be completed on all assessments assigned a response priority level within 24 hours of face-to-face contact with the alleged victim to guide decisions such as the following: A. Whether or not the child(ren) may safely remain in the home, B. The need for interventions to eliminate the threat of immediate harm, and C. Whether the child(ren) must be removed from the home II. Safety assessments look at the child's present danger and the interventions currently needed to protect the child. Throughout the assessment period, and for open cases, whenever new information becomes available that threatens the safety of the child(ren), a Safety Assessment is completed immediately on receipt of the new information.”

184. On information and belief, a Safety Assessment was never completed for Assessment # 826330.

185. DCYF Policy 1172 requires that for every report, “The assigned CPSW must review all available prior Founded, Unfounded, and Unfounded but with Reasonable Concerns reports on the child/youth and family to evaluate their significance to the current assessment. 2. If there have been two or more prior "Unfounded" or "Unfounded but with Reasonable Concerns"

reports involving any family or household member, the Division will conduct an administrative review of all identified reports as noted in II below...An administrative review of all identified reports will be conducted when there have been two or more prior "Unfounded" or "Unfounded but with Reasonable Concerns" reports involving any family or household member. These will be conducted through: A. A review by a Rapid Safety Feedback Program Specialist; B. An internal case consultation; C. A review by a Supervisor completed through supervision pursuant to policy 1050 section II:B, 4(b); or D. Other: another process identified in consultation with the supervisor."

186. On information and belief, no administrative review was performed even though the various reports note multiple prior reports above the words "Administrative Review Required."

187. On information and belief, the Montgomery family was evicted from their home on the day before Thanksgiving, 2019.

Report #18 to DCYF on January 7, 2020

188. DCYF received an anonymous report on January 7, 2020. This report was opened as Assessment # 850020.

189. According to the Report, the anonymous reporter stated their concern for Harmony and the two other children because Adam and Kayla were using drugs in front of their children.

190. On information and belief, the family was residing at a shelter, Families in Transition.

191. According to the Report, DCYF asked the Manchester Police Department to perform a welfare check.

192. According to the Contact Log, on January 8, 2020, Tsaros spoke to Adam by telephone. As noted in the Contact Log, Adam recounted that the police had been there.

193. As noted in the Contact Log, Tsaros asked if he could stop by to see the family, at which point Adam told him that Harmony was now living with her mother.

194. The Contact Log notes that Adam stated that the family had been evicted the day before Thanksgiving, and because they were going to be homeless, it made sense for Harmony to stay with her mother, whom she was going to visit anyway.

195. According to the Contact Log, it was not until 12 days later, on January 20, 2020, that Tsaros left a voicemail for Crystal, seeking to know whether Harmony was there.

196. On information and belief, Tsaros never followed up on the voicemail he had left or took any other action to confirm Harmony's whereabouts.

197. According to the Contact Log for January 21, 2020, Tsaros spoke to the Division of Family Assistance and learned that Adam and Kayla had submitted applications listing only S.M. and D.M. as children living with them.

198. On information and belief, Kayla was continuing to collect benefits for Harmony.

199. On information and belief, it appears that either Tsaros did not, in fact, contact the Division of Family Assistance, or the Division of Family Assistance provided him with incorrect information.

200. On information and belief, on March 23, 2020, Assessment number 850020 was closed as unfounded.

Report #19 to DCYF on September 7, 2021

201. On September 7, 2021, DCYF received a report from someone identifying herself as a counselor/therapist. This report was designated as Report Number 930234.

202. According to this Report, the counselor/therapist had called to report that Crystal had not seen Harmony in two years because she was unable to locate Adam. Crystal was supposed

to have visits with Harmony.

203. A notation in the Contact Log states that on September 16, 2021, Crystal received a telephone call from a caseworker named Bailey Pischke (hereinafter “Pischke”). According to the Contact Log, Crystal reported that she did not know where Harmony was and believed that Harmony was living with Adam somewhere in Manchester, New Hampshire.

204. As noted in the Contact Log, Crystal reported that there is a parenting plan in place pursuant to which she is supposed to have visits with Harmony, however she does not have any contact information for Adam and Adam has blocked her from all of his social media accounts.

205. According to the Contact Log, Crystal stated that when she would have telephone conversations with Harmony, Adam would be in the background coaching her and would hang up if Harmony said anything “out of the ordinary.”

206. It was only after being contacted by DCYF on September 16, 2021, that Crystal began to believe that DCYF did not know the whereabouts of either Harmony or Adam or whether Harmony was safe. Prior to that date, Crystal reasonably believed that Harmony was safely living with Adam under DCYF’s observation, supervision and care. At this point, Crystal began an immediate and frantic search for Harmony and Adam.³

207. On or about November 18, 2021, Crystal called the Manchester Police Department, telling them that she hadn’t seen Harmony since a Facetime call on Easter, 2019. On information and belief, Crystal told the Manchester Police that while she had been a drug abuser in 2018 when she lost custody of Harmony, she had since regained her sobriety.

³ Between Easter 2019 and September 16, 2021, Crystal repeatedly called Central Intake of DCYF to try to arrange for contact with Harmony, but she was told every single time that DCYF could not share any information with Crystal because it was confidential.

208. On information and belief, and according to the Contact Log, DCYF employees soon determined that Harmony was not registered in the Manchester school system.

209. On or about December 29, 2021, Crystal sent an email to Manchester Mayor Joyce Craig, begging her for help in finding Harmony.

210. On or about December 31, 2021, the Manchester Police Department held a press conference and announced the search for Harmony.

211. On or about January 7, 2022, Crystal received a copy of “discovery materials,” including some portion (still unknown) of DCYF’s case record for Harmony. It was only after receiving those records that Crystal began the process of understanding DCYF’s role in failing to protect Harmony.

212. Crystal was unaware, and could not reasonably have known, that DCYF had been negligent in carrying out its statutory, regulatory and common-law duties towards Harmony, leading to Harmony’s abuse and neglect and, ultimately, to her death, until reading the records she received on or about January 7, 2022.

213. On information and belief, on December 31, 2021, the Manchester Police located both Adam and Kayla.

214. On information and belief, Adam was uncooperative and refused to provide information regarding Harmony’s whereabouts.

215. On information and belief, after questioning, Kayla reported that after they were evicted on November 27, 2019 the family was living in their car.

216. On information and belief, Kayla recounted that between November 27, 2019 and December 7, 2019 Adam would grow upset with Harmony because she was not saying that she needed the bathroom and consequently was having accidents.

217. On information and belief, on each occasion that Harmony had an accident, Adam would strike Harmony in the face and/or head with a closed fist.

218. On information and belief, on or about December 7, 2019, Adam struck Harmony three separate times over the course of a few minutes because she had had a bathroom accident.

219. On information and belief, after the final blow, Adam heard or saw something that caused him to believe that he had caused Harmony serious injury.

220. On information and belief, Kayla recounted that Harmony moaned for approximately five minutes.

221. On information and belief, sometime later, Adam and Kayla realized that Harmony was not breathing and had died.

222. On information and belief, Kayla informed the police that she and Adam had concealed Harmony's body in a number of locations before Adam finally dumped the body in an undisclosed location.

223. On information and belief, there is forensic evidence in various locations corroborating Kayla's account that Harmony's body had been kept in those places.

224. Harmony's body has not yet been found.

225. On or about May 9, 2024, Adam was sentenced to forty-five years to life for the murder of Harmony, and he was sentenced to an additional eleven years, to be served consecutively, for falsifying evidence, tampering with a witness and second-degree assault.

226. In November 2022, Kayla Montgomery pleaded guilty on two charges of perjury after reaching a fully negotiated plea agreement with the Attorney General's Office, and she was sentenced to eighteen months in prison.

227. On or about February 25, 2022, a report titled "Comprehensive Update on the

Ongoing Case Involving Harmony Montgomery and Recommended Systematic Improvements” (hereinafter “The Governor’s Report”) was issued by the New Hampshire Governor’s office in consultation with the Attorney General.

228. The stated purpose of The Governor’s Report is to facilitate locating Harmony and “...making recommendations for systemic improvements.”

229. Unfortunately, not only does The Governor’s report contain inaccuracies and omissions in its recitation of the facts which collude to downplay DCYF’s negligence and to mislead the public, but they also raise questions about the effectiveness of the “systemic improvements.”

230. For example, The Governor’s Report recounts that on December 20, 2018, DCYF requested additional information from Mass DCF so that it could perform a home study, and goes on to state that “Prior to receiving the requested additional information, NH DCYF was informed that the Massachusetts court had awarded custody to Adam Montgomery.” The Governor’s Report glosses over the fact that the award of custody to Adam occurred two months after DCYF requested additional information, during which time DCYF never followed up on its request or otherwise contacted Mass DCF.

231. More egregiously, The Governor’s Report states that on July 29, 2019 “The CPSW visited the home, and observed the children, including Harmony Montgomery...This Assessment was conducted as Adam Montgomery and Harmony were entering their vehicle.” The Governor’s Report does not state that this “assessment” was done “briefly” and from a distance, and that the CPSW did not ask either Harmony or Adam about the reported black eye, in violation of DCYF policies.

232. The Governor’s Report also states that the CPSW sent an email to the Manchester

Police Department on July 29, 2019 stating that he "...did not observe an injury on the child *consistent with a black eye.*" (emphasis added). In fact, Tsaros' email to the Manchester Police stated that the CPSW "did not observe *any* bruises, marks, etc." The Governor's Report thus downplays the paucity of the CPSW's "assessment" of Harmony's condition and safety, in violation of DCYF policies.

233. In the course of outlining the assessment, The Governor's Report states that "The CPSW spoke with Harmony Montgomery's biological mother, Crystal Sorey, who asserted that she lost custody in Massachusetts and that Adam Montgomery obtained full custody..." What The Governor's Report does not state is that this call took place on October 8, 2019 and was made only in response to a call made by Crystal to DCYF fourteen days earlier. This was only nine days before the Closing Letter was sent, closing the Assessment.

234. The Governor's Report states that there is no record of Crystal calling DCYF between October 19, 2019 and September 2021. This is demonstrably false (as will be proven during discovery) and fails to note that Crystal had also been making her own efforts to locate Harmony and Adam during this time period.

235. Finally, The Governor's Report states that "On January 8, 2020, a referral was received by NH DCYF regarding the Montgomery household but did not reference Harmony Montgomery." However, the report, dated January 7, 2020 (Report No. 850020), states "*Concern for Harmony, 5 yo, [S.M.], 2 yo, and [D.M.], less than a year old who reside with their parents, Adam, and Kayla Montgomery.*" (emphasis added).

236. On January 14, 2022, undersigned counsel emailed Attorney General John Formella, requesting from then DHHS Commissioner Lori Shibinette and then DCYF Director Joe Ribsam a complete, unredacted copy of Harmony's DCYF case record. Then Associate

Attorney General Anne Edwards responded that the records would be “provided in the regular course.” As of the date of this lawsuit, no one from DHHS, DCYF, or the AG’s office has communicated with undersigned counsel about this matter in any way or provided him with Harmony’s complete, unredacted DCYF case record.

COUNT I
Negligence Causing Death
(Homicide) and Abuse and Neglect
(As brought by Plaintiff in her
representative capacity as the
appointed administratrix of the Estate
of Harmony Montgomery)

237. The plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in the preceding Paragraphs as though fully and completely set forth herein.

238. At all times relevant to the allegations contained herein, DCYF and its employees and agents owed the plaintiff a duty to exercise reasonable care to protect Harmony from unreasonable and foreseeable risks of harm, to provide for her physical and emotional well-being, to promptly and thoroughly investigate allegations, instances, and indications of physical and emotional abuse and neglect of not only Harmony but of other children as well, to follow, adhere to, and abide by the laws of the State of New Hampshire and by its own policies, practices and procedures to protect children from foreseeable risks of harm, a duty to conduct a thorough and competent investigation upon receiving a report of suspected abuse, and the duty to otherwise comport with basic notions of due care to avoid exposing Harmony to foreseeable risks of harm.

239. Despite and in breach of the aforesaid duties, DCYF’s actions, by and through its agents, were negligent and breached minimum standards of care when it knew of allegations of concerning behavior of Harmony’s caretakers, including, but not limited to, her father, Adam,

including but not limited to instances of physical and emotional abuse and neglect relating to Harmony and not only failed to conduct a proper, timely, thorough and competent investigation upon receiving reports of suspected abuse, but also specifically exposed Harmony to foreseeable risk of abuse and neglect, including death, when it failed to appreciate the danger faced by Harmony and failed to follow its own policies and procedures regarding, *inter alia*, without limitation, the performance of safety assessments, the performance of risk assessments, the review of prior assessments regarding reports of abuse and/or neglect, the investigation of open assessments regarding reports of abuse and/or neglect, the handling of subsequent reports of abuse and/or neglect, the conducting of interviews, the cooperation with law enforcement agencies, the referral and recommendation of intervention(s) for Harmony in order to protect her from foreseeable risk of abuse and/or neglect, including homicide.

240. As a direct and proximate cause and result of the above negligence and breaches of care by DCYF and its employees and agents, during her lifetime Harmony was the subject of multiple separate single incidents of serious physical and emotional abuse and neglect, including, but not limited to, corporal punishment, verbal and mental abuse, beatings that caused serious injury, and death.

241. Despite and in breach of the aforesaid duties and of minimum standards of care, DCYF – as an agency charged by statute with the protection of abused and neglected children in New Hampshire – committed negligent acts when, with probable cause to believe that Harmony was being abused and neglected, DCYF, as alleged herein and *inter alia*, nevertheless: failed to appreciate the danger that Harmony faced; failed to properly and timely investigate reports informing DCYF of the abuse and neglect of Harmony; failed to protect Harmony from reasonably foreseeable risks of abuse and neglect, including her death; failed to avoid both affirmative acts

and inaction which exposed Harmony to reasonably foreseeable risks of abuse and neglect, including her death; failed to provide for Harmony's physical and emotional/psychological well-being; failed to follow its own policies, practices, and procedures to carry out the child protection duties which DCYF owed to Harmony; and failed to take appropriate preventive, interventive, or other remedial action to prevent Harmony's abuse and neglect, including her death, but not limited to, that DCYF failed to remove Harmony from the abusive and neglectful home.

242. For example, DCYF was negligent when it, inter alia: made untimely determinations regarding reports of abuse and neglect of Harmony and, where timely determinations would have enabled DCYF to meaningfully investigate and address such reports; interviewed Harmony in front of the alleged perpetrator of his abuse and neglect and in the location where the alleged abuse and neglect occurred, thereby depriving DCYF of the benefit of a neutral, uninfluenced interview of Harmony; failed to follow up with individuals who reported abuse and neglect of Harmony, thereby depriving DCYF of meaningful investigation and all information available to it pertaining to such reports; failed to meaningfully interview Adam Montgomery as the alleged perpetrator as well as Kayla Montgomery; failed to properly screen in and categorize reports of Harmony's abuse and neglect, thereby precluding such information from receiving the required and appropriate response; failed to fully and adequately notify law enforcement and other agencies charged with child protection of reports of abuse and neglect of Harmony; failed to meaningfully assess Harmony's safety in Adam Montgomery's home; and failed to take any appropriate preventive, interventive, or other remedial action which would have prevented Harmony from suffering the reasonably foreseeable abuse and neglect and her homicide that she suffered as a result of DCYF's failings.

243. As a direct and proximate cause and result of the above negligence and breaches of care by DCYF and its employees and agents, DCYF is liable to Estate of Harmony Montgomery for damages for which DCYF is both directly and vicariously liable and for which her Estate seeks compensation for Harmony's wrongful death, along with conscious pain and suffering during her life as a consequence of each one of the single incidents of physical and emotional abuse and neglect that she suffered during her lifetime, including, but not limited to, substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, lost income and earning capacity during her probable working life had she survived, and enhanced compensatory damages for the wanton, malicious, and oppressive conduct in which DCYF negligently caused Harmony's abuse and neglect and death, and any recoverable damages under RSA 556:12 and/or recoverable under any law, and all within the minimum and maximum jurisdictional limits of the Superior Court, plus interest and costs.

COUNT II
Negligent Supervision and Training
Causing Death (Homicide) and
Abuse and Neglect
(As brought by Plaintiff in her
representative capacity as the
appointed administratrix of the Estate
of Harmony Montgomery)

244. The plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in the preceding Paragraphs as though fully and completely set forth herein.

245. An employer is directly liable for damages resulting from the negligent training of its employees and the negligent supervision of its employees' activities. Cutter v. Town of

Farmington, 126 N.H. 836, 840 (1985); Trahan-Laroche v. Lockheed Sanders, Inc., 139 N.H. 483, 485 (1995). “A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless: (a) in giving improper or ambiguous orders o[r] in failing to make proper regulations; or (b) in the employment of improper persons or instrumentalities in work involving risk of harm to others; (c) in the supervision of the activity.” Cutter, 126 N.H. at 840-841. This rule holds because “one initiating conduct having an undue tendency to cause harm is liable therefore,” and the agent's “incompetence or unskillfulness due to...his lack of experience considered with reference to the act to be performed” may create a “dangerous quality.” Id.

246. RSA 169-C:2, I identifies the purpose of New Hampshire’s Child Protection Act: “to provide protection to children whose life, health or welfare is endangered.” The legislature intended this purpose to be effectuated, in part, by RSA 169-C:34, aptly named “Duties of the Department of Health and Human Services,” i.e., DCYF. The statute states, in part, as follows:

I. If it appears that the immediate safety or well-being of a child is endangered, the family may flee or the child disappear, or the facts otherwise so warrant, the department shall commence an investigation immediately after receipt of a report. In all other cases, a child protective investigation shall be commenced within 72 hours of receipt of the report.

II. For each report it receives, the department shall promptly perform a child protective investigation to: (a) Determine the composition of the family or household; (b) Determine whether any person in the same family or household was named in a prior report of abuse or neglect, and, if there are 2 or more prior unfounded or unfounded but with reasonable concern reports involving any family or household member, conduct an administrative review of all identified reports; (c) Determine whether there is probable cause to believe that any child in the family or household is abused or neglected, including a determination of harm or threatened harm to each child, the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof, and a determination of the person or persons apparently responsible for the abuse or neglect; (d) Determine the immediate and long-term risk to each child if the child remains in the existing home environment; and (e) Determine the protective treatment, and ameliorative services that appear necessary to help prevent further child abuse or neglect and to improve

the home environment and the parents' ability to adequately care for the children.

IV. Upon notification by the department that the immediate safety or well-being of a child may be endangered, the court shall, upon finding probable cause to believe that the child's immediate safety or well-being is endangered, order a police officer or a juvenile probation and parole officer or child protection service worker, accompanied by a police officer, to enter the place where the child is located, in furtherance of such investigation.

VII. If the child's parents refuse to allow a social worker or state employee on their premises as part of the department's investigation, and the department has probable cause to believe that the child has been abused or neglected, the department shall seek a court order to enter the premises....

See RSA 169-C:34 (emphasis added). Further, with respect to DCYF's duties to "determine whether there is probable cause to believe that any child...is abused or neglected," that probable cause standard is met – and therefore triggers DCYF's corresponding duties to act in response to the abuse and neglect – when DCYF has "facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected." RSA 169-C:3, XXIII.

247. Thus, the plain text of RSA 169-C:34 makes apparent that DCYF cannot perform its statutory child protections duties without properly training, supervising, and controlling its employees and agents in the performance of DCYF's duties.

248. At all times relevant to the allegations contained herein, DCYF and its employees and agents owed Harmony – a child among the class of persons which DCYF is statutorily charged with protecting – a duty to exercise reasonable care in the training and supervision and control of its employees and agents including, *inter alia*, the duty to: properly supervise, train, and control its employees and agents to promptly and thoroughly investigate allegations, instances and indications of the abuse and neglect of Harmony; follow and implement its own policies, practices, and procedures relative to proper training and supervision of its employees and agents to ensure

that its employees and agents were trained to – and actually did – provide for the physical and emotional/psychological well-being of Harmony as well as identify, report, and take appropriate preventive, interventive, and otherwise remedial action so that the children under its care, including Harmony, would not be exposed to abuse and neglect; properly supervise, train, and control its employees and agents so as to ensure that they did not have the opportunity to commit – and did not actually commit – acts or omissions that would cause abuse or neglect to the children under its care, including Harmony, nor make such acts or omissions as would expose them to same; and otherwise comport with basic notions of due care in its training, supervision and control of its employees and agents.

249. At all times relevant to the allegations contained herein, DCYF owed the plaintiff a duty to exercise reasonable care in the training and supervision of its employees and agents including, *inter alia*, the duty to properly supervise, train, and control its employees and agents to promptly and thoroughly conduct competent investigations upon receiving a report of suspected abuse, instances, and indications of physical and emotional abuse of not only Harmony but of other children as well, the duty to follow, adhere to, comply with and implement its own policies, practices, and procedures relative to proper training and supervision of its employees and agents to ensure that its employees and agents were trained to identify, report, and take appropriate action so that the children under its care would not be exposed to physical or emotional harm or neglect and to take appropriate action to remove them from reasonably foreseeable physical or emotional harm or neglect, to ensure that its employees and agents did not have the opportunity to commit acts or omissions that would cause harm to children in its custody, the duty to properly train its employees to avoid conflicts of interest and the duty to otherwise comport with basic notions of due care in its training and supervision of its employees and agents.

250. Despite and in breach of the aforesaid duties, DCYF, as an organization and agency charged by statute with the protection of abused and neglected children in New Hampshire, was negligent and breached minimum standards of care in failing to properly train and supervise its workers to promptly and effectively respond to reports of suspected child abuse and neglect and in failing to effectively use the resources of its own and other allied organizations in responding promptly and effectively to reports of suspected child abuse and/or neglect, thereby resulting in multiple separate incidents of serious physical and emotional abuse and neglect of Harmony during her lifetime.

251. Further, DCYF negligently supervised its employees and agents where, after the majority of these and other unnamed negligent acts occurred, a DCYF supervisor “signed off” on such negligent acts pursuant to either DCYF policies or custom and practice.

252. As a direct and proximate cause and result of the negligence and breaches of care by DCYF, Harmony suffered significant damages including her homicide, for which DCYF is both directly and vicariously liable and for which her Estate seeks relief including, but not limited to, damages for Harmony’s wrongful death, conscious suffering, mental and physical pain suffered by her in consequence of her injuries, the reasonable expenses caused to her Estate by her injuries, the probable duration of her life but for her injuries, her capacity to earn money during her probable working life had she survived, along with enhanced compensatory damages for the wanton, malicious, and oppressive manner in which DCYF negligently caused Harmony’s abuse and neglect and death; any damages recoverable under RSA 556:12 and/or recoverable under any other law; and with the foregoing all within the minimum and maximum jurisdictional limits of the Superior Court, plus interest and costs.

253. As a direct and proximate cause and result of the above negligence and breaches of care by DCYF and its employees and agents, during her lifetime Harmony was the subject of multiple separate single incidents of serious physical and emotional abuse and neglect, including, but not limited to, corporal punishment, verbal and mental abuse, beatings that caused serious injury, and death.

254. As a direct and proximate cause and result of the above negligence and breaches of care by DCYF and its employees and agents, DCYF is liable to Estate of Harmony Montgomery for damages to compensate it for Harmony's pain and suffering during her life as a consequence of each one of the single incidents of physical and emotional abuse and neglect that she suffered during her lifetime, including, but not limited to, substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, lost income and earning capacity, and enhanced compensatory damages for DCYF's wanton, malicious, and oppressive conduct, all within the minimum and maximum jurisdictional limits of the Superior Court, plus interest and costs.

COUNT III
Breach of Fiduciary Duty
*(As brought by Plaintiff in her
representative capacity as the
appointed administratrix of the Estate
of Harmony Montgomery)*

255. The plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in the preceding Paragraphs as though fully and completely set forth herein.

256. "In this state, 'fiduciary relationship' has been defined comprehensively, and exists

whenever influence has been acquired and abused or confidence has been reposed and betrayed.” Clark & Lavey Benefits, Inc. v. Education Dev. Ctr., Inc., 157 N.H. 220, 227 (2008) (emphasis supplied).

257. Whether a fiduciary duty exists presents a jury question. Id. at 228.

258. Abundant facts exist supporting jury findings that: a.) confidence was reposed in DCYF to protect Harmony’s interests to be safe and free from abuse; and b.) DCYF betrayed that confidence.

259. The Legislature has reposed confidence in DCYF to act to ensure the safety of children reported to have suffered abuse. “Upon receipt of a report of child abuse, DHHS is statutorily charged with conducting an investigation to ensure the safety of the child.” Olivia Atkocaitis v. New Hampshire Department of Health and Human Services, et al., Docket No. 217-2023-CV-00052, slip op. at p. 18 (Merrimack County Super. Ct. Jan. 3, 2024).

260. More particularly, “[w]hen DCYF is put on notice of alleged abuse of a child, it takes on a special confidence binding it, and its agents and employees ‘to act in good faith and with due regard to the interests of that child.’” Id. (quoting Schneider v. Plymouth State Coll., 144 N.H. 458, 462 (1999)).

261. The fiduciary nature of the relationship between DCFY on the one hand—and the children on the other hand whom the Legislature has reposed confidence in DCYF—follows necessarily from Schneider v. Plymouth State College, 144 N.H. 458 (1999). Schneider held that “the relationship between a post-secondary institution and its students is a fiduciary one,” in the context of sexual abuse of students by faculty members, given that “[s]tudents are in a vulnerable situation because ‘the power differential between the faculty and students makes it difficult for students to refuse unwelcome advances and also provides the basis for negative sanctions against those who do refuse.’”

Id. at 462 (quotations omitted).

262. The power differential is exponentially more severe between parents and their minor children than between College faculty members and their young-adult students. As New Hampshire’s Office of Child Advocate has stated, “[c]hildren cannot protect themselves against neglectful or abusive parents.” OCA 2018 Annual Report at 47.

207. It is hence manifest that—just as a post-secondary institution has a fiduciary relationship with its students to protect them from faculty sexual abuse—so does DCYF have a fiduciary relationship with helpless minor children such as Harmony whose parents abuse them as reported to DCYF—particularly where the Legislature has entrusted the agency with exclusive authority to receive and investigate allegations of suspected child abuse and neglect from a state-wide class of mandatory reporters and the public. *See* RSA 169-C:29-31.

208. DCYF received notice of Adam Montgomery’s alleged abuse and neglect of his minor daughter Harmony during the agency’s assessment and intake process. An assessment denotes an investigation of alleged child abuse or neglect, pursuant to DCYF Policy 1172. “The primary goal of the Assessment process is to ensure the safety of the children,” Policy 1172 states.

209. During the assessment process, DCYF has mandated special powers to intervene in the parent-child relationship to provide safety-related services for the protection of abused or neglected children, such as exclusive authority to receive and investigate all allegations of suspected child abuse and neglect, authority to meet or observe all children in the household, authority to interview children without prior parental notification, authority to have children remove their clothing to document injuries, and authority to contact anyone to obtain information about the family—including schools, medical staff, hospitals, police, neighbors, and landlords.

210. As clarified by a 2018 legal memorandum from the New Hampshire Attorney General to the OCA and DHHS, Harmony was in the “custody or control” of DCYF during the assessment

process—in connection with which process DCYF received and “screened in” for review multiple reports alleging that her father abused her.

211. In the 2018 legal memorandum, the AG provided legal advice to DCYF and the OCA interpreting the meaning of “custody or control” of DCYF through the AG’s “responsibility to exercise general supervision over state agencies to ensure that they perform their duties according to the law.” Authored by Attorney General Gordon MacDonald (now the Chief Justice of the Supreme Court) and Associate Attorney General Anne Edwards (now a Superior Court judge), the AG’s memorandum advised the agencies that “custody or control” of DCYF means: “With respect to child protective services, the term ‘custody or control’ should be read broadly to include children who are in the assessment phase of the process or who have had calls made to Central Intake that have been screened for review.” Exhibit 1 at 3 (emphasis added).

212. “[T]he statutory scheme in the overall interpretation of RSA 170-G:18 supports a broader reading of ‘custody or control’ to include screened in intakes,” the AG concluded.

213. DCYF received repeated and mounting reports of Harmony’s abuse by her father while Harmony was in DCYF’s custody and control.

214. DCYF therefore owed Harmony a fiduciary duty to act to ensure Harmony’s safety and to protect her from abuse, imposing a duty on the agency to do such things as: investigate and address the reports of her abuse diligently; follow up with individuals who reported her abuse and neglect to DCYF; interview Harmony under circumstances where DCYF could assess the child without her being susceptible to the influence of her father and her abuser; interview the alleged abuser Adam Montgomery and his spouse Kayla Montgomery with appropriate rigor about the heinous allegations reported to the agency concerning Mr. Montgomery’s savage treatment of his daughter; screen in and categorize properly reports of Harmony’s abuse and neglect to ensure that the information triggered the required and appropriate response; notify law

enforcement and other agencies charged with child protection of reports of abuse and neglect; remove Harmony from Adam's home given the abuse and neglect that the child was manifestly suffering; take any appropriate preventive, interventional, or other remedial action to prevent Harmony from suffering reasonably foreseeable abuse and neglect; and to adhere to the agency's own policies and procedures designed to protect children such as Harmony from abuse and neglect.

215. DCYF and its employees and agents breached their fiduciary duties to Harmony, breaching their fiduciary duties to ensure Harmony's safety and to protect her from abuse, in that, among other things, the agency and its employees and agents: failed to investigate and address the reports of Harmony's abuse diligently; failed to follow up with individuals who reported her abuse and neglect to DCYF; failed to interview Harmony under circumstances where DCYF could assess the child without her being susceptible to the influence of her father and her abuser; failed to interview the alleged abuser Adam Montgomery and his spouse Kayla Montgomery with appropriate rigor about the heinous allegations reported to the agency concerning Mr. Montgomery's savage treatment of his daughter; failed to screen in and categorize properly reports of Harmony's abuse and neglect to ensure that the information triggered the required and appropriate response; failed to notify law enforcement and other agencies charged with child protection of reports of Harmony's abuse and neglect; failed to remove Harmony from Adam's home given the manifest abuse and neglect the child suffered; failed to take any appropriate preventive, interventional, or other remedial action to prevent Harmony from suffering reasonably foreseeable abuse and neglect; and failed to adhere to the agency's own policies and procedures designed to protect children such as Harmony from abuse and neglect.

216. As a direct and proximate result of DCYF's breaches of its fiduciary duties to Harmony—and the fiduciary duties owed to Harmony by DCYF's employees and agents, Harmony suffered multiple separate single incidents of serious physical and emotional abuse and neglect during her short and wretched life, including, but not limited to, corporal punishment, verbal and mental abuse, and beatings that caused serious injury, and death.

217. As a direct and proximate cause and result of the above breaches of its fiduciary duties by DCYF and its employees and agents, DCYF is liable to Estate of Harmony Montgomery for damages to compensate it for Harmony's pain and suffering during her life as a consequence of each one of the single incidents of physical and emotional abuse and neglect that she suffered during her lifetime, including, but not limited to, substantial personal injuries of a disabling, debilitating, and permanent nature, severe and prolonged pain and suffering, permanent impairment, loss of enjoyment of life, severe permanent mental and emotional distress, lost income and earning capacity, and enhanced compensatory damages for DCYF's wanton, malicious, and oppressive conduct, all within the minimum and maximum jurisdictional limits of the Superior Court, plus interest and costs.

COUNT IV
Loss of Consortium/Familial
Relationship
(As brought by Plaintiff in her
individual capacity)

263. The plaintiff hereby repeats, realleges, and incorporates by reference each and every factual allegation set forth in the preceding Paragraphs as though fully and completely set forth herein.

264. At all times relevant to the allegations contained herein, DCYF and its employees and agents owed the plaintiffs a duty to exercise reasonable care to protect Harmony from unreasonable and foreseeable risks of harm, to provide for her physical and emotional well-being, to conduct a thorough and competent investigation upon receiving a report of suspected abuse, to promptly and thoroughly investigate allegations, instances, and indications of physical and emotional abuse and neglect of not only Harmony but of other children as well, to follow, adhere to, and abide by the laws of the State of New Hampshire and by its own policies, practices and procedures to protect children from foreseeable risks of harm, and the duty to otherwise comport with basic notions of due care to avoid exposing Harmony to foreseeable risks of harm.

265. Despite and in breach of the aforesaid duties, DCYF's actions, by and through its agents, were negligent and breached minimum standards of care when it knew of allegations of concerning behavior of Harmony's caretakers, including, but not limited to, her father, Adam, including but not limited to instances of physical and emotional abuse and neglect relating to Harmony and not only failed to properly investigate these allegations, but also specifically exposed Harmony to foreseeable harm, when, following multiple separate incidents of physical and emotional abuse and neglect suffered by Harmony it continued to fail to appreciate the danger faced by Harmony and failed to follow its own policies and procedures regarding, *inter alia*, the performance of safety assessments, the performance of risk assessments, the review of prior assessments regarding reports of abuse and/or neglect, the investigation of open assessments regarding reports of abuse and/or neglect, the handling of subsequent reports of abuse and/or neglect, the cooperation with law enforcement agencies, the referral and recommendation of intervention(s) for Harmony in order to protect her from abuse and/or neglect, resulting in a final incident of physical abuse so severe that it caused Harmony's death.

266. As a direct and proximate cause and result of the above negligence and breaches of care by DCYF and its employees and agents, during her lifetime Harmony was the subject of multiple separate single incidents of serious physical and emotional abuse and neglect, including, but not limited to, corporal punishment, verbal and mental abuse, beatings that caused serious injury, and death.

267. As a direct and proximate cause and result of the above negligence and breaches of care by DCYF and its employees and agents, Crystal has suffered the loss of consortium and her familial relationship with his minor daughter, Harmony, including the loss of her comfort, society, affection, guidance and companionship, all within the minimum and maximum jurisdictional limits of the Superior Court, plus interest and costs.

WHEREFORE, the plaintiff respectfully seeks the following relief:

A. Judgment for the Estate against the defendant for monetary damages including, but not limited to, compensation to the Estate of Harmony Montgomery pursuant to RSA 556:9 and 11;

B. Judgment for the Estate against the defendant for monetary damages including, but not limited to, compensation to the Estate of Harmony Montgomery pursuant to RSA 556:12,I;

C. Judgment for the plaintiff against the defendant for monetary damages including, but not limited to, compensation to Crystal Sorey pursuant to RSA 556:12,III; and

D. Such other and further relief as the Court deems equitable and just.

DEMAND FOR JURY TRIAL

The plaintiff hereby demands a trial by jury. As discovery is ongoing, the plaintiff

expressly reserves the right to amend and/or supplement this Complaint and Demand for Jury Trial and does not waive any other or further claims available to her.

Respectfully Submitted,

CRYSTAL SOREY, BOTH
INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE
ESTATE OF HARMONY
MONTGOMERY,
By Her Attorneys,
DOUGLAS, LEONARD & GARVEY, P.C.

Date: February 11, 2025

By: /s/ C. Kevin Leonard
C. Kevin Leonard, Esquire (#10019)
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(603) 224-1988
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served this date upon all counsel of record via the ECF filing system.

/s/ C. Kevin Leonard
C. Kevin Leonard, Esquire

TO: Commissioner Jeffrey Meyers
Moirá O'Neill, Director, Office of Child Advocate
Associate Commissioner Christine Tappan
Joseph Ribsam, Director, Division for Children, Youth and Families

FR: Attorney General Gordon MacDonald
Associate Attorney General Anne Edwards
Assistant Attorney General Jill Perlow

RE: Legal Advice Relating To RSA 170-G:18

DATE: March 5, 2018

The purpose of this memorandum is to provide legal advice to the Division for Children, Youth and Families (DCYF) and the Office of Child Advocate (OCA). The Legislature established OCA in 2017. See RSA 170-G:18. The Attorney General has the responsibility to exercise general supervision over state agencies to ensure that they perform their duties according to the law. See RSA 7:8. Based on a review of the applicable statutes, this memorandum sets forth the scope of OCA's responsibilities and the duties of both agencies in implementing the statutory directives.

In interpreting statutes, this Office follows statutory construction principles established by the New Hampshire Supreme Court. In the case of *State Employees Ass'n of NH v. NH Div of Personnel*, 158 NH 338, 343 (2009), the Court stated:

We are guided by a number of well-settled principles of statutory construction. "Our goal is to apply statutes in light of the legislature's intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme." *Soraghan v. Mt. Cranmore Ski Resort*, 152 N.H. 399, 401, 881 A.2d 693 (2005). "When construing the meaning of a statute, we first examine the language found in the statute, and where possible, we ascribe the plain and ordinary meanings to words used." *Conrad v. Hazen*, 140 N.H. 249, 251, 665 A.2d 372 (1995) (quotation omitted). "We interpret statutes not in isolation, but in the context of the overall statutory scheme." *Appeal of City of Portsmouth*, 151 N.H. 170, 174, 855 A.2d 483 (2004). "When interpreting two statutes that deal with a similar subject matter, we construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statutes." *Grand China v. United Nat'l Ins. Co.*, 156 N.H. 429, 431, 938 A.2d 905 (2007). "[W]e will not consider what the legislature might have said or add language that the legislature did not see fit to include." *In the Matter of Liquidation of Home Ins. Co.*, 154 N.H. at 479, 913 A.2d 712 (quotation omitted).

Oversight by the Office of the Child Advocate

RSA 170-G:18, III (a) sets forth the Legislature's most direct expression of its intent with respect to the overall mission of the OCA:

Provide independent oversight of the division for children, youth, and families to assure that the best interests of children are being protected.

This statement is used as the basis for the analysis in this memorandum of OCA's role with respect to DCYF.

The next step in the analysis is to define what the "division for children, youth, and families" is within the overall statutory scheme. RSA 170-G, as a whole, is entitled "Services for Children, Youth and Families." RSA 170-G:2 establishes the bureaus of children, community services, and administrative services, with the Commissioner having the authority to establish any other bureaus that he believes are necessary. RSA 170-G:4 provides that the Department, through the different bureaus or divisions created, shall, among other responsibilities, provide the following services:

Child protective services (RSA 17-G:4, II),

Services for children through juvenile probation and parole officers (RSA 17-G:4, II-a),

Certifications of already licensed facilities for receiving minors who must be detained pursuant to RSA 169-B:14 or committed pursuant to RSA 169-B:19, and

Certifications of all providers of services that are paid for by DHHS pursuant to RSA 169-B:40, RSA 169-C:27, and RSA 169-D:29.

Juvenile justice services are also authorized for the purpose of consolidating field services provided to children and youth in RSA 170-G:14-:16.

It is also important to note that the statute establishing OCA was purposefully located by the Legislature in RSA 170-G. Thus, based on specific language of RSA 170-G:18, as well as the overall statutory structure, OCA has independent oversight over all of DCYF including both child protective services and juvenile justice services.

This general determination regarding OCA's oversight of all of DCYF informs the analysis of additional sections of RSA 170-G.

Children in the Custody or Control of the Department

RSA 170-G:18, IV(a) provides:

The department of health and human services shall provide the office with a copy of all incident or other reports related to actual physical injury to children or a significant risk of such harm, as well as other incidents which may affect the safety and well-being of children in the custody or control of the department not later than 48 hours after the occurrence; provided that any child fatality or serious injury shall be immediately communicated to the office by telephone.

The phrase "custody or control of the department" in this statute refers to children who are in either DCYF's child protection care, physical/legal custody, or control, or in its juvenile justice services control or custody.

RSA 170-G:18, III, refers specifically to "child protection services" and the statutes authorizing child protection activities including RSA 169-C. There is no specific language that excludes children in the custody or control of juvenile justice services. Additionally, the orders in both juvenile justice cases and child protective cases describe the children as being in the "control," "care," or "custody," or some combination of those words, of DCYF. Thus, given OCA's broad oversight of DCYF, there is no basis for excluding children in the custody and control of juvenile justice as part of OCA's broad oversight of DCYF.

With respect to child protective services, the term "custody or control" should be read broadly to include children who are in the assessment phase of the process or who have had calls made to Central Intake that have been screened in for review. RSA 170-G:18, III (c) provides that OCA must maintain confidentiality of records and it specifically refers to RSA 170-G:8-a. RSA 170-G:8-a, I includes, among other information, intake and assessment reports. Again, the statutory scheme in the overall interpretation of RSA 170-G:18 supports a broader reading of "custody or control" to include screened in intakes.

Notification Requirements to OCA

RSA 170-G:18, IV (a) also requires notification to OCA no later than 48 hours after an occurrence regarding "actual physical injury to children or a significant risk of such harm, as well as other incidents which may affect the safety and well-being of children in the custody or control of the department." This notification is required only for children who are in open DCYF cases, including open juvenile justice services cases, open child protection cases, or screened in intakes. This notification is not required for children who may have been part of past closed DCYF cases.

RSA 170-G:18, IV (a) also requires that “any child fatality or serious injury shall be immediately communicated to the office by telephone.” Again, this notification is required only for children who are in open DCYF cases, including open juvenile justice cases, open child protection cases, or screened in intakes. Therefore, if a child is not in the custody or control of any bureau of DCYF at the time of his/her death or serious injury, there is no requirement for DCYF to notify OCA.

This conclusion is based on reading the beginning part of the sentence in RSA 170-G:18, IV (a) with the second section of the sentence after the semi-colon which begins with the phrase “provided that” which is referring to the different mechanisms of notice for the same population of children in DCYF custody or control. The first part of the sentence requires that, for any child in DCYF custody or control, any incident or report regarding physical injury, significant risk of harm or other incidents that might affect the safety and well-being of a child must be communicated within 48 hours. However, for any child in DCYF custody or control who is killed or seriously injured, that communication must occur immediately by telephone.

Additionally, this interpretation is a logical extension of the statutory scheme because there is no reason why DCYF would necessarily be aware of every child fatally or seriously injured in the State. Not all children who are harmed or killed are within DCYF custody or control. Given that DCYF will not know about some child fatalities, only requiring it to report on child fatalities or serious injuries of the children in its custody or control is the logical reading of this section of the statute.

OCA’s Authority to Investigate

OCA’s authority to review records and investigate is broad. RSA 170-G:18, III (c) allows OCA to have direct access to the Bridges electronic case record system and to other DCYF records including all case records, third party records, and records submitted to courts. OCA is required to comply with all confidentiality provisions of RSA 169-C:25 and RSA 170-G:8-a. RSA 170-G:8-a, specifically provides that all records that are retained or created based on reports received under RSA 169-C:29, RSA 169-B, RSA 169-C, RSA 169-D, RSA 463, or RSA 170-G:4, with some specific exceptions, are required to be kept confidential. As a result, even though RSA 170-G:18, III (c) does not cite to certain specific confidentiality provisions in RSA 169-B and RSA 169-D, the legislative intent is to maintain the confidentiality of all of these records including the juvenile justice records.

If OCA desires, it can request a court order to release confidential information. OCA can also request release of certain information from the Commissioner regarding fatal or near fatal cases in accordance with RSA 126-A:5, XII. Interestingly, RSA 126-A:5, XII (a) states that the Commissioner “shall, upon request, publicly disclose” the information included in subsection (b)

of that statute. As the Commissioner has already pointed out to OCA and legislative leadership, this need to request the release of information from the Commissioner is problematic given the legislative directive that OCA shall be independent from DCYF. OCA should consider pursuing a legislative change to be able to determine what information it can release.

Further, OCA's right to have access to "all" records in RSA 170-G:18, III (c) does not have any restrictions on what OCA's review of the records is related to. And, when read in context with RSA 170-G:18, III (a) requiring "independent oversight of DCYF to assure that the best interest of children are protected," (f) having "the authority to review and investigate any aspect of the department's child protection policies or practices," (g) providing "information and referral services to the public regarding the department's child protection services," and (i) investigating and reporting "on issues related to the department's child protection services upon request" of various entities, OCA may have access to any records regarding children who are in, who were in, or who were screened out of DCYF's custody or control.

At this time, these are the only sections of RSA 170-G:18 that the Attorney General's Office has interpreted. We are available to interpret additional sections or assist our clients in working through specific factual situations when they arise.