

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

CASE NO. 217-2020-CV-00026

DAVID MEEHAN

v.

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

(IN RE YDC and YDSU CONSOLIDATED LITIGATION)

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**JOINT STATUS CONFERENCE MEMORANDUM**

In aid of the status conference set for the YDC and YDSU Consolidated Cases (“YDC Consolidated Cases”) on April 18, 2023, Plaintiffs<sup>1</sup> and State Defendants<sup>2</sup> submit this Joint Status Conference Memorandum, stating as follows:

**I. Plaintiffs’ Update on Filing and Service of Short Form Complaints**

***A. Claims Against State Defendants***

1. As of the date of this filing, undersigned counsel have been retained by more than 1,000 individuals who allege that they suffered abuse (either sexual, physical, and/or psychological) while they were children in State custody living in juvenile residential facilities. Victims of abuse continue to come forward.

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<sup>1</sup> For purposes of this motion, “Plaintiffs” means all Plaintiffs in this consolidated litigation represented by Rilee & Associates, P.L.L.C. and Nixon Peabody LLP.

<sup>2</sup> The “State Defendants” identified in the Master Complaint are: the State of New Hampshire; the New Hampshire Department of Health and Human Services (“DHHS”) and its named Divisions, the Division of Children, Youth and Families (“DCYF”) and the Division of Juvenile Justice Services (“DJJS”); the Youth Development Center (“YDC”), also known as the Sununu Youth Services Center and Youth Development Services Unit, formerly known as the State Industrial School and Adolescent Detention Center. State Defendants continue to maintain that there is only *one* proper State Defendant: DHHS.

2. To date, Plaintiffs have filed 844 Short Form Complaints (some of which were filed as amended complaints) that incorporate by reference the common allegations set forth in the Master Complaint.

3. Plaintiffs' counsel anticipate filing at least another 147 Short Form Complaints for their remaining current clients who wish to file a complaint but have not yet filed.

4. State Defendants have agreed to accept service of process of all complaints in the YDC Consolidated Cases, all of which are or will be subject to the Court's rulings on the two pending Master Motions to Dismiss.

***B. Supplemental Claims Against Third-Party Contractors***

5. Out of the 844 Short Form Complaints filed to date, 213 complaints assert both "consolidated claims" (claims of abuse suffered by the plaintiff while in State custody in a State-operated facility) and "supplemental claims" (claims of abuse suffered by the plaintiff while in State custody in a privately operated third-party placement).

6. To date, the following 38 third-party contractors ("Contractor Defendants") have been named in Short Form Complaints filed in the YDC Consolidated Cases:

- Mount Prospect Academy, Inc. (45 complaints);
- Easter Seals New Hampshire, Inc. (22 complaints);
- Pine Haven Boys Center (17 complaints);
- Nashua Children's Home (15 complaints);
- New England Salem Children's Trust, Inc. (3 complaints);
- NFI North, Inc. (52 complaints);
- Spaulding Academy & Family Services (f/k/a Spaulding Youth Center) (9 complaints);
- Dover Children's Home (2 complaints);
- Our House for Girls f/k/a Group Home of Dover, Inc. ("Dover Girls Home") (1 complaint);
- Eckerd Youth Alternatives, Inc. (29 complaints);
- Charter Behavioral Health System of Nashua, Inc. ("Charter Brookside") (2 complaints);
- Institute for Family and Life Learning (5 complaints);
- Odyssey House, Inc. a/k/a OdysseyNH (24 complaints);

- The Oliverian School, Inc. (2 complaint);
- Orion House, Incorporated (8 complaints);
- Outward Bound (1 complaint);
- Harbor Schools Incorporated (2 complaints);
- Malley Farm Boys Home (f/k/a Somersworth Group Home) (2 complaints);
- The Maple Valley School, Inc. (1 complaint);
- Robert F. Kennedy Community Alliance, Inc. (1 complaint);
- The Spurwink School, New Hampshire (3 complaints);
- Waypoint (f/k/a Child and Family Services) (2 complaints);
- Webster House (7 complaints);
- Wediko Children's Services, Inc. (4 complaints);
- Wreath School of New Hampshire, Inc. (10 complaints);
- Ascentria Care Alliance, Inc. (2 complaints);
- Frederic L. Chamberlain Center, Inc. (a/k/a Chamberlain School) (1 complaint);
- Community Alliance of Family/Human Services, Inc., f/k/a Community Youth Advocates ("Chandler House") (3 complaints);
- Élan School (2 complaints);
- Kurn Hattin Homes for Children (1 complaint);
- Educational Challenge Associates, Inc. ("Lakeview") (1 complaint);
- Learning Networks Foundation (2 complaints);
- St. Ann's Home, Inc. (1 complaint);
- New Hampshire Catholic Charities Hampshire (3 complaints);
- Brattleboro Retreat (1 complaint);
- Marathon House (2 complaints);
- Hassle House (1 complaint); and
- Chase Home (1 complaint).

7. Undersigned counsel anticipate they will be filing more Short Form Complaints in the future that assert supplemental claims against third party contractors. It is difficult at this time to predict how many additional complaints will include supplemental claims.

8. Most Contractor Defendants have either agreed to accept service or have been and will be served conventionally.

9. Plaintiffs have filed numerous Motions for Alternative Service regarding four named Contractor Defendants: one with respect to Institute for Family Life and Learning, one with respect to Spurwink School, New Hampshire (a/k/a/ Spurwink Corporation and/or Spurwink Services, Incorporated), one with respect to The Elan School, and one with respect to Maple Valley

School. These Motions outline the difficulties of effecting service upon these entities and request an order from the Court permitting or deeming effective, alternative service methods. The status of those Motions is as follows:

a. Institute for Family Life and Learning Motions:

- i. In *John Doe #549 v. NH Dep't of Health & Human Servs. et al.*, No. 217-2022-CV-00994, on January 20, 2023, Plaintiff filed a motion to extend time for service and moved to permit alternative service upon Defendant Institute for Family Life Learning (“IFLL”) by allowing Plaintiff to serve via certified or registered mail Institute of Family Life and Learning Foundation’s (“IFLLF”) directors/officers Robert Zollo and/or Robert McDermott, or alternatively grant Plaintiff leave to amend his complaint to add a claim for successor liability against IFLLF or, alternatively, permit Plaintiff to effect service on IFLL by publication in a manner prescribed by law and the Court. By margin order, on January 24, 2023, the Court denied that motion without prejudice, noting that the plaintiff did not need the court’s permission to add claims of successor liability. On February 10, 2023, Plaintiff filed a motion for reconsideration on the grounds that the Court overlooked plaintiff’s alternative relief requested that plaintiff be permitted to serve IFLL through its last known directors/officers. The Court has not yet ruled on the Motion to Reconsider and, in the interim, the court granted plaintiff’s motion to extend his service deadlines to await the court’s guidance on permissible service methods. **The Motion to Reconsider is ripe for ruling.**
- ii. In two cases—*John Doe #551 v. NH Dep't of Health & Human Servs. et al.*, No. 217-2022-CV-01082 and *Jane Doe #86 v. NH Dep't of Health & Human Servs. et al.*, No. 218-2023-CV-00144—Plaintiffs have twice moved this Court to extend their respective service deadlines to await the court’s guidance on acceptable methods of service upon IFLL / IFLLF. The Court granted these motions.

b. Spurwink School, NH / Spurwink Services, Inc. Motions:

- i. In *John Doe #521 v. NH Dep't of Health & Human Servs. et al.*, No. 217-2022-CV-00827, Plaintiff moved the Court to permit alternative service upon Defendant Spurwink School, New Hampshire by service upon Spurwink Services, Incorporated. The Court granted that motion on January 20, 2023. Spurwink Services, Incorporated subsequently appeared in the action and, on March 31, 2023, filed a Motion for Reconsideration of the Court’s January 20 ruling, challenging the court’s conclusion that service upon Spurwink Services, Incorporated is service upon Spurwink School, NH. Plaintiff objected on April 10, 2023.

- ii. In the following two cases, the respective Plaintiff has filed a motion to extend his service deadlines to await the court's ruling on Spurwink Services, Incorporated's pending Motion to Reconsider the court's ruling on Plaintiff John Doe #521's Motion for Alternative Service: *John Doe #643 v. NH Dep't of Health & Human Servs. et al.*, No. 218-2023-CV-00136, and *John Doe #226 v. NH Dep't of Health & Human Servs. et al.*, No. 217-2022-CV-00141.

c. The Elan School Motions:

- i. On February 3, 2023, Plaintiffs in *John Doe #578 v. NH Dep't of Health & Human Servs. et al.*, No. 218-2022-CV-01120 and *John Doe #615 v. NH Dep't of Health & Human Servs. et al.*, No. 218-2023-CV-00044 moved the Court to permit alternative service upon Defendant Elan School by serving Edward Macoll and Sharon Terry, both individuals formerly associated with the Elan School, in lieu of serving Elan School at its last known address, which was no longer current. Alternatively, Plaintiff also requested leave to permit service by publication in a manner prescribed by the Court. On February 8, 2023, the Court granted Plaintiff's motion for alternative service and to extend the respective service deadlines as requested. Alternative service upon The Elan School was completed on or about March 24, 2023.

d. Maple Valley School Motion:

- i. In *John Doe #444 v. NH Dep't of Health & Human Servs. et al.*, No. 217-2022-CV-00992, Plaintiff moved the Court to permit alternative service upon Defendant Maple Valley School by service upon certain former directors of Maple Valley School or alternatively allow service upon Maple Valley School by publication based on the difficulties in serving Maple Valley School per New Hampshire's long-arm statute. The Court granted Plaintiff's request to serve Maple Valley School alternatively by mailing the service packet to certain former directors identified in the Motion for Alternative Service. Alternative service was completed on March 20, 2023.

10. As of the date of this filing, this Court has issued service packets in 65 cases with supplemental claims for which Plaintiffs have not yet completed service, but which Plaintiffs anticipate they will complete service within the next 60 days. This set includes the following new Contractor Defendants, who have not previously been served in any case:

- Brattleboro Retreat
- Community Alliance of Family/Human Services, Inc., f/k/a Community Youth Advocates ("Chandler House")
- Charter Behavioral Health System of Nashua, Inc.
- Hassle House

- Malley Farm Boys Home (f/k/a Somersworth Group House)
- The Oliverian School, Inc.
- Harbor Schools Incorporated

11. As of the date of this filing, the following Contractor Defendants have been named, for the first time, in complaints recently filed in this consolidated litigation. The Court has not yet issued service packets for these Contractor Defendants:

- Chase Home
- Educational Challenge Associates, Inc.
- Kurn Hattin Homes for Children
- Learning Networks Foundation
- Marathon House
- Nashua Brookside Hospital
- Our House for Girls f/k/a Group Home of Dover, Inc. (“Dover Girls Home”)
- Outward Bound

***C. Contractor Defendant Responsive Pleadings***

12. With respect to the 23 Contractor Defendants who have accepted service or who have otherwise been served with process, this Court issued a Scheduling Order accepting the Plaintiffs’ proposal to extend the Contractor Defendants’ responsive pleading deadlines until April 28, 2023. The Court’s order, however, contained a Scrivener’s error causing confusion. *See* Feb. 10, 2023 Proc. Order, Index #241. On page 7, subheading 2 reads “Contractor Defendants’ Deadline Extended to 4/28/2023 If Served Prior to **3/3/2023**” but the body of that subheading contradicts, indicating “Contractor defendants who are served or who accept service, on or after **March 30, 2023**, shall have the 30 days provided by” the Superior Court rules. *See id.* at 7.

- a. Plaintiffs’ timely moved the court for clarification or reconsideration of certain portions of this order, including whether the court intended the service deadline to be March 3, 2023, or March 30, 2023. *See* Index #251.
- b. Thereafter, one of the Contractor Defendants, Easter Seals, moved the court to clarify the inconsistency on page 7 of the Court’s Procedural Order. *See* Index #264. In a margin order, the Court clarified the deadline for service as 3/3/2023. Thereafter, Easter Seals moved this Court to reconsider that decision, explaining that if the operative service deadline is 3/3/2023, rather than 3/30/2023, the result

would be Contractor Defendants who are later served being required to respond or move to dismiss the complaints sooner than earlier served Contractor Defendants. *See* Index #274. **That Motion is ripe for ruling.**

13. Motions to dismiss have been filed by the following Contractor Defendants in 47 cases to date. In each of those motions, Defendants have raised a statute of limitations defense. Accordingly, Plaintiffs in each of those cases has filed (or will file) notices with the Court that they intend to submit factual declarations establishing the grounds for application of the discovery rule and related equitable tolling doctrines. Plaintiffs' counsel are currently working diligently to collect factual declarations from each client with a motion to dismiss pending. The following provides more details on the Contractor motions to dismiss filed thus far:

- a. On behalf of Mount Prospect Academy, Orion House, Incorporated, and Frederic L. Chamberlain Center, Attorney DePasquale has moved to dismiss 24 complaints, including the four motions filed prior to this Court's Procedural Order. As to 19 of those motions, Plaintiffs were due to file objections by either April 14, 17, or 18. However, the parties recently conferred and agreed to extend the objection deadline for all those cases until April 24, 2023 to allow Plaintiffs' additional time to gather discovery related to the statute of limitations issue. *See* Index #286 (Assented-To Motion to Extend Plaintiffs' Deadline to Object). The Court granted this motion. The other five Plaintiffs have timely noticed their intent to rely on the discovery rule and other tolling doctrines and are due to object either May 10 or 20, 2023.
- b. On behalf of NFI North, Inc., and per the parties' agreed-upon briefing schedule, Attorney Lisa Wade moved to dismiss 25 complaints in a consolidated motion to dismiss and supporting memorandum of law, filed in the lead docket on March 30, 2023. Per the parties' agreements, objections to those 25 motions are due by April 29, 2023.
- c. On behalf of New Hampshire Catholic Charities, Attorneys Rose Marie Joly and Geoff Gallagher moved to dismiss John Doe #637's complaint (218-2023-CV-00107) for failure to state a claim and on statute of limitations grounds. Plaintiff is due to notice his intent to rely on the discovery rule and other tolling doctrines on April 22, 2023 and object thirty days later.
- d. On behalf of Dover Children's Home, Attorney Joly and Gallagher moved to dismiss John Doe #86's complaint (217-2021-CV-00686) for failure to state a claim and on statute of limitation grounds. Plaintiff is due to notice his intent

to rely on the discovery rule and other tolling doctrines on April 24, 2023 and object thirty days later.

***D. Merrimack County Superior Court Cases***

14. Plaintiffs' counsel have separately filed 22 complaints against the State and various Contractor Defendants alleging abuse suffered while in State custody, but where the plaintiff suffered abuse solely within privately-operated facilities (i.e., no abuse occurred in State-operated facilities). Because those cases are not subject to consolidation with these proceedings pursuant to the Court's Consolidation Order, and the complaints in those cases do not incorporate the allegations of the Master Complaint, Plaintiffs have not filed those cases in this Court. Rather, in order to not overburden this Court, Plaintiffs have filed these "Contractor Placement-Only" cases in Merrimack County Superior Court.

15. Plaintiffs' counsel have filed two other cases against the State alleging causes of action stemming from abuse suffered during their childhood. These cases are *sui generis* in that the plaintiffs in these cases were not in State custody, nor in the custody of a State contractor, at the time of the abuse. In both cases, however, Plaintiffs allege that individuals with a connection to the YDC, brought children to the YDC in order to abuse them there.

16. Recognizing that the Contractor Placement-Only cases arise from similar facts and raise some similar and overlapping legal issues (including, limitations and immunities), Plaintiffs and State Defendants have agreed to a continuation of all deadlines in those cases until 30 days after this Court issues a decision ruling on State Defendants' Motions to Dismiss the Consolidated YDC and YDSU cases, which is currently still pending with this Court.

**II. Discovery Update and Motion to Compel**

17. Counsel for Plaintiffs and State Defendants have continued to engage in discovery in this matter and have also instituted a regular meet and confer meeting once every three weeks.

18. Plaintiffs served a First Combined Set of Requests for Production on DHHS on October 13, 2022. Plaintiffs later served a Second Combined Set of Requests for Production on DHHS on November 30, 2022, and a Third Combined Set of Requests for Production on DHHS on December 16, 2022. Defendants have served written responses and objections to each. Defendants have begun producing documents responsive to these Requests.

19. Defendants have continued to produce Plaintiffs' resident files, personnel files of alleged abusers and other employees gathered from both non-DHHS sources (including Division of Administrative Services) and from DHHS, as requested in several of Plaintiffs' Document Requests, once authorized by this Court's Order under N.H. C.A.R. Per. 1501.01, and supplements to their Voluntary Production of materials scanned from various YDC storage facilities. Defendants continue to attempt to locate and identify additional hardcopy or electronic materials that may still exist and be responsive to Plaintiffs' Requests, and will produce non-privileged responsive materials in due course. Defendants will continue to produce documents on a rolling basis. Defendants do not believe they are obligated to correlate the materials from the Voluntary Production to those later requests. Plaintiffs dispute State Defendants' position on this matter and filed a Motion to Compel on February 15, 2023. State Defendants filed an Opposition to the Motion on March 27, 2023 and Plaintiffs have filed a Reply. **The Motion to Compel is ripe for ruling and the parties are prepared to present argument on this Motion during the April 18, 2023 Status Conference.**

20. Defendants served two sets of document requests on Plaintiffs on January 9 and 18, 2023, to which Plaintiffs provided written responses and objections on March 20, 2023. Plaintiffs produced automatic disclosures relating to Plaintiff David Meehan when his case was an individual, non-consolidated case, but have not yet produced any materials in response to State

Defendants' requests for production of documents relating to Mr. Meehan or any other Plaintiff. Apart from appropriate supplementation to Mr. Meehan's initial disclosures, which will be provided in due course, Plaintiffs' counsel does not believe that Mr. Meehan has any additional documents to produce in response to State Defendants' requests for production. Both parties have agreed the Meehan case should be tried first. Plaintiffs anticipate producing documents relating to additional Plaintiffs in the near future upon amending the current Protective Order to ensure that Plaintiffs can appropriately protect highly confidential information. Upon execution of the amendment to the Protective Order, Plaintiffs will begin to produce responsive documents on a rolling basis.

21. Plaintiffs anticipate that further party and non-party discovery will continue throughout the coming months, including subpoenas to law enforcement agencies seeking case files. The parties additionally anticipate that depositions of parties and non-parties will need to be scheduled in the coming months.

22. Given the substantial voluminous discovery in this matter, on April 7, 2023, Plaintiffs moved for appointment of a discovery master or referee to assist as discovery dispute arise. Defendants responded on April 11, 2023. Defendants do not oppose this motion, but reserve their right to object at a later date if the parties are unable to agree on a joint proposed order. Plaintiffs submit that the discovery master could also potentially assist in other important tasks, such as selecting initial representative cases for trial and setting reasonable case schedules. Defendants submit that the remit of the discovery master should be limited to certain discovery issues. However, the parties have agreed that they will meet and confer to discuss the bounds of any appointed discovery master.

### **III. Plaintiffs' Motion to Set Initial Trial Dates**

23. Prior to the last Status Conference in January 2023, Plaintiffs filed a Motion to Set Initial Trial Dates. The purpose of that motion is to begin moving this consolidated litigation forward by setting an initial round of trial dates for a representative subgroup of Plaintiffs. By focusing on the claims of a representative subgroup of Plaintiffs and setting trial dates for an initial round of trials for that subgroup, the Court will assist the parties in focusing discovery and other pretrial efforts. Plaintiffs' motion proposed an initial wave of 25 Plaintiffs, including lead Plaintiff David Meehan, all of whom were abused at YDC around the same time period as Mr. Meehan, by many of the same abusers. Plaintiffs' motion requested four trial dates in 2024 and suggested that consolidated trials of five or six Plaintiffs at a time would be preferable. At the January 2023 Status Conference, the Court asked the State Defendants to submit a response to the Plaintiffs' motion.

24. Following the January Status Conference, counsel for Plaintiffs and State Defendants engaged in multiple meet-and-confer sessions in the hopes of brokering an agreement on trial and case scheduling. Those efforts were largely unsuccessful and State Defendants thereafter filed a Partial Objection to Plaintiffs' Motion on February 13, 2023. Plaintiffs filed a Reply on February 23, 2023.

25. At a minimum, Plaintiffs and State Defendants agree that Plaintiff David Meehan's case should be tried first, at some point in the first half of 2024 (Plaintiffs propose a trial date in March 2024, while State Defendants propose an "aspirational" trial date in June 2024). They also agree that the initial set or wave of trials should only include claims that are solely focused on State-facility abuse (i.e., no supplemental claims against Contractor Defendants). Plaintiffs and State Defendants disagree as to how cases should be selected for trial, and also whether cases can be tried in joint trials. Plaintiffs note, as stated above, that if a Discovery Master or Referee is

appointed, that neutral could potentially be helpful in brokering agreements on the selection of cases for trial and the establishing of reasonable case schedules and trial dates. Defendants submit that the remit of the discovery master should be limited to certain discovery issues. However, the parties have agreed that they will meet and confer to discuss the bounds of any appointed discovery master.

**26. Plaintiffs' Motion to Set Initial Trial Dates is currently pending before the Court and the parties are prepared to present argument on the Motion at the April 18, 2023 Status Conference.**

Respectfully submitted,

April 14, 2023,

**STATE DEFENDANTS**

By and through counsel,

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**CERTIFICATE OF SERVICE**

I certify that on April 14, 2023, I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts (e-mail addresses) in this case.

/s/ W. Daniel Deane

W. Daniel Deane, Esq.