

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)

PLAINTIFFS' PRE-HEARING MEMORANDUM

Plaintiffs,¹ by and through undersigned counsel, submit this Pre-Hearing Memorandum in aid of the Status Conference set for January 27, 2023, and state as follows:

1. The Court has scheduled an In-Person Status Conference on January 27, 2023, to follow oral arguments on the State's First and Second Motions to Dismiss the Master Complaint. In order to ensure the efficient use of all parties' time at that hearing, Plaintiffs submit this Pre-Hearing Memorandum, which provides pertinent updates to the Court and submits case management proposals for the Court's consideration.

I. Update on Filing and Service of Short Form Complaints

A. *Claims Against State Defendants*

2. As of the date of this filing, undersigned counsel have been retained by approaching 1,000 individuals who allege that they suffered abuse (either sexual, physical, and/or psychological) while they were children in State custody living in State-operated juvenile

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

residential facilities. Victims of abuse continue to come forward, so this number is likely to increase further.

3. To date, undersigned counsel have filed 714 Short Form Complaints (some of which were filed as amended complaints) that incorporate by reference the common allegations set forth in the Master Complaint (six publicly named plaintiffs, 624 John Does, and 84 Jane Does). Undersigned counsel anticipate filing at least another 193 Short Form Complaints for their remaining current clients who wish to file a complaint but have not yet filed.

4. In addition, undersigned counsel currently anticipate filing motions for leave to amend 90 Short Form Complaints.

5. State Defendants have agreed to accept service of process of all complaints in the above-captioned YDC and YDSU Consolidated Cases (“YDC Consolidated Cases”).

B. Supplemental Claims Against Third-Party Contractors

6. Out of the 714 Short Form Complaints filed to date, 208 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). These cases with supplemental claims are included in YDC Consolidated Cases because the consolidated claims arise from “events and conditions at State operated juvenile justice facilities.” (Order Regarding Consolidation of Claims and Cases, dated July 6, 2022 (Index #67)) (“Consolidation Order”).²

² Undersigned counsel have separately filed seven complaints against the State and various third-party contractors alleging abuse suffered while in State custody, but where the plaintiff only suffered abuse in privately-operated facilities (i.e., no abuse in State-operated facilities). Pursuant to this Court’s Consolidation Order, those cases are not subject to consolidation with these proceedings, and they do not incorporate the allegations of the Master Complaint. Nevertheless, they do allege similar claims against the State and the State’s contractors. Please note, undersigned counsel has been filing these “contractor facility only” claims in Merrimack County Superior Court. The Court *sua sponte* transferred one of these cases—Case No. 217-2023-CV-00002 (Jane Doe #73)—to Rockingham Superior Court to be consolidated with the

7. To date, the following third-party contractors (“Contractor Defendants”) have been named in Short Form Complaints filed in the YDC Consolidated Cases: Mount Prospect Academy, Inc. (38 complaints), Easter Seals New Hampshire, Inc. (14 complaints), Pine Haven Boys Center (13 complaints), Nashua Children’s Home (13 complaints), New England Salem Children’s Trust, Inc. (two complaints), NFI North, Inc. (32 complaints), Saddleback Mountain Retreat, Inc. (one complaint), Spaulding Academy & Family Services (f/k/a Spaulding Youth Center) (eight complaints), Dover Children’s Home (two complaints), Our House for Girls f/k/a Group Home of Dover, Inc. (“Dover Girls Home”) (one complaint), Eckerd Youth Alternatives, Inc. (22 complaints), Charter Behavioral Health System of Nashua, Inc. (“Charter Brookside”) (two complaints), Institute for Family and Life Learning (five complaints), Odyssey House, Inc. a/k/a OdysseyNH (15 complaints), The Oliverian School, Inc. (one complaint), Orion House, Incorporated (five complaints), Outward Bound (one complaint), Harbor Schools Incorporated (three complaints), Malley Farm Boys Home (f/k/a Somersworth Group Home) (two complaints), The Maple Valley School, Inc. (one complaint), Robert F. Kennedy Community Alliance, Inc. (one complaint), The Spurwink School, New Hampshire (two complaints), Waypoint (f/k/a Child and Family Services) (one complaint), Webster House (two complaints), Wediko Children’s Services, Inc. (two complaints), Wreath School of New Hampshire, Inc. (eight complaints), Ascentria Care Alliance, Inc. (one complaint), Frederic L. Chamberlain Center, Inc. (a/k/a Chamberlain School) (one complaint), Community Alliance of Family/Human Services, Inc., f/k/a Community Youth Advocates (“Chandler House”) (two complaints), Élan School (two complaints), Kurn Hattin Homes for Children (one complaint), Educational Challenge Associates,

YDC Consolidated Cases. Plaintiffs filed a motion for clarification noting that the case does not appear to be appropriate for consolidation under the Court’s Consolidation Order. *See infra* Part II.

Inc. ("Lakeview") (one complaint), Learning Networks Foundation (two complaints), St. Ann's Home, Inc. (one complaint), and New Hampshire Catholic Charities Hampshire (one complaint).

8. 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.

9. The following Contractor Defendants have agreed to acceptance of service:

Contractor Defendant	Attorney
Pine Haven Boys Center	Robert S. Carey, Esq., Orr & Reno
Easter Seals New Hampshire, Inc.	Rose Marie Joly, Esq. and Geoffrey M. Gallagher, Esq., Sulloway & Hollis, P.L.L.C.
Nashua Children's Home	Paul Kleinman, Esq., Bouchard, Kleinman & Wright, PA
NFI North, Inc.	Lisa Snow Wade, Esq., Orr & Reno
Mount Prospect Academy	Frank L. DePasquale, Esq., Murphy & Riley, P.C. (limited to 15 complaints served in December 2022/January 2023)
New England Salem Children's Trust, Inc.	Christopher E. Grant, Esq., Boynton, Waldron, Doleac, Woodman & Scott, P.A.,
Orion House, Incorporated	Lisa Snow Wade, Esq. (outside counsel), Orr & Reno, accepted service of JD #'s 415, 480; Attorney Frank DePasquale entered an appearance for Orion House thereafter
Dover Children's Home	Rose Marie Joly, Esq. and Geoffrey M. Gallagher, Esq., Sulloway & Hollis, P.L.L.C.
Wediko Children's Services, Inc.	Linda Smith, Esq. Morrison Mahoney LLP

10. The following Contractor Defendants have been served, but have either not yet conferred with, or have not yet reached an agreement with, plaintiffs for acceptance of service:

- a. Eckerd Youth Alternatives, Inc., represented by Adam Mordecai, Esq. of Morrison Mahoney LLP);
- b. Frederic L. Chamberlain Center, represented by Frank DePasquale, Esq. of Murphy & Riley, P.C.;
- c. Waypoint, represented by Michael Eaton, Esq. and Todd J. Hathaway, Esq. of Wadleigh, Starr & Peters PLLC

- d. Spurwink Services, Incorporated, f.k.a. The Spurwink School, New Hampshire, represented by Jonathan Lax, Esq. of Gallagher, Callahan & Gartrell, P.C.

11. Plaintiffs are currently working on serving process on the following additional Contractor Defendants:

- a. Dover Children's Home;
- b. Institute for Family Life and Learning;
- c. Odyssey House, Inc.;
- d. Lakeview Academy;
- e. Wreath School of New Hampshire, Inc.;
- f. The Maple Valley School, Inc.;
- g. Spaulding Academy & Family Services;
- h. Malley Farm Boys Home;
- i. Waypoint;
- j. Elan School;
- k. Robert F. Kennedy Community Alliance, Inc.

12. Additionally, Plaintiffs have filed two Motions for Alternative Service, one with respect to Institute for Family Life and Learning and one for Spurwink School, New Hampshire (a/k/a/ Spurwink Corporation and/or Spurwink Services, Incorporated), outlining the difficulties of effecting service upon these entities and requesting an order from the Court permitting or deeming effective, alternative service methods. In the alternative, Plaintiffs have sought leave to amend the relevant complaints to add claims for successor liability against the entities identified in the respective Motions for Alternative Service.

13. As of the date of this filing, this Court has issued service packets in 40 cases with supplemental claims for which Plaintiffs have not yet completed service. In total, Plaintiffs expect

to serve 49 individual service packets over the next month or two, including serving for the first time the following Contractor Defendants:

- a. St. Ann’s Home, Inc.;
- b. Charter Behavioral Health System of Nashua, Inc.;
- c. Ascentria Care Alliance;
- d. Saddleback Mountain Retreat, Inc.

14. As of the date of this filing, Plaintiffs are awaiting service packets in two cases in order to complete service of process on Contractor Defendants. In addition, new summonses for first amended short form complaints filed in late summer 2022 have not been issued by the court and Plaintiffs will be requesting those summonses which will thereafter need to be served.

C. Contractor Defendant Responsive Pleadings

15. With respect to the eleven (11) Contractor Defendants who have accepted service or who have otherwise been served with process, Plaintiffs and those Contractor Defendants have agreed to the following extensions with regard to the deadline to answer or otherwise plead in response to those supplemental claims:

Contractor Defendant	Deadline Extension Agreement
Pine Haven Boys Center	30 days to respond to complaint following 1/27 conference; assented-to motion to extend filed
Easter Seals New Hampshire, Inc.	1/30/2023
Eckerd	3/1/2023
Wediko	2/23/2023; assented-to motion to extend filed
Nashua Children’s Home	1/31/2023
NFI North	On 12/14/2022, agreed to 30-day extension; thereafter Attorney Wade assented to plaintiffs’ motion to continue contractor deadlines until after 1/27

Mount Prospect Academy	No assent to plaintiff's motion to continue contractor deadlines; no assent to plaintiffs' request to extend objection deadline to motion to dismiss JD #402's complaint; with regard to fifteen (15) complaints served this month, plaintiffs agreed no responsive pleading deadlines until after 1/27 conference
New England Salem Children's Trust	Attorney Grant notified of plaintiffs' motion to continue contractor defendant deadlines until after 1/27 conference
Orion House, Incorporated	Position unclear, no agreement to date – although Attorney Wade initially assented on behalf of NFI North to extend contractor responsive pleading deadlines until after the 1/27 conference, it appears Attorney DePasquale is taking over representation and has filed motions to dismiss on behalf of Orion
Spurwink Services, Incorporated (a/k/a/ Spurwink School, New Hampshire or Spurwink Corporation)	Undersigned counsel assented to a 45-day extension of the responsive pleading deadline requested Philadelphia Insurance adjuster Ann Donahue on behalf of Spurwink, who had yet to be assigned counsel; undersigned counsel relayed that agreement to Attorney Lax on 1/26/23
Waypoint	On 1/25/23, undersigned counsel assented to a 30-day extension of the responsive pleading deadline (until 2/24/2023) requested by Philadelphia Insurance adjuster Wesley Miner on behalf of Waypoint, who had yet to be assigned counsel at the time; undersigned counsel relayed that agreement to Attorney Eaten on 1/26/23

16. Additionally, motions to dismiss have already been filed in the following matters:

- a. Mount Prospect Academy (Attorney DePasquale) filed a motion to dismiss John Doe #402's complaint on December 1, 2022. On December 23, 2022, Plaintiffs objected, outlining their substantive arguments for preservation purposes, and asserting that the motion was premature and would be better handled as part of a consolidated briefing process in coordination with the other contractor defendants. *See also* Plaintiffs' Motion to Continue Certain Contractor Defendant Deadlines (filed on or about 12/20/22).

- b. Orion House, Incorporated (Attorney DePasquale) filed two motions to dismiss John Doe ##'s 415, 480 complaints on January 18, 2023. Plaintiffs' objections are presently due January 28, 2023. Plaintiffs reiterate their position that this briefing should, in the interests of judicial economy, be consolidated with other contractors following the January 27, 2023 status conference, to provide a uniform, efficient and orderly process. Alternatively, should the court disagree with continuing responsive pleading deadlines or the Plaintiffs' proposal regarding same, Plaintiffs request an extension of their objection deadline by two weeks, or **February 11, 2023**.
- c. Frederic L. Chamberlain Center (Attorney DePasquale) filed a motion to dismiss John Doe #526's Complaint on January 20, 2023. Plaintiff's objection is presently due January 30, 2023. Plaintiffs reiterate their position that this briefing should, in the interests of judicial economy, be consolidated with other contractors following the January 27, 2023 status conference, to provide a uniform, efficient and orderly process. Alternatively, should the court disagree with continuing responsive pleading deadlines or the Plaintiffs' proposal regarding same, Plaintiffs request an extension of their objection deadline by two weeks, or **February 13, 2023**.

II. Motion to Sever and Motion for Clarification

17. As noted above, the Court's July 6, 2022 Consolidation Order permitted consolidation of "claims arising from events and conditions at State operated juvenile justice facilities." It also allowed that any Plaintiff with "consolidated claims arising from events and conditions at State operated juvenile justice facilities" could also assert "supplemental" claims "arising from events and conditions at private facilities and programs." The Short Form Complaints of 208 Plaintiffs in the YDC Consolidated Cases assert such supplemental claims.

18. Plaintiffs have construed the Consolidation Order to mean that any plaintiff who alleges they were abused only while in a private placement cannot consolidate such claims in the YDC Consolidated Cases, even if that plaintiff alleges claims against State Defendants based on the fact that State Defendants had legal custody of the plaintiff and therefore owed nondelegable duties to the plaintiff.

19. With that understanding in mind, undersigned counsel has been filing such "private placement only" cases in Merrimack County Superior Court. Each of those cases are

standalone cases and none of them incorporate the allegations of the Master Complaint filed in the YDC Consolidated Cases.

20. Upon performing further inquiry, undersigned counsel learned that the claims of three Plaintiffs who had filed claims in these consolidated proceedings were not appropriate for consolidation—John Doe #26, John Doe #373, and John Doe #225. Counsel discovered that the allegations of John Doe #26 and John Doe #373 were based solely on events that occurred in privately-operated facilities. Accordingly, these two cases are not appropriate for consolidation under the express terms of the Consolidation Order. Additionally, undersigned discovered that John Doe #225 was not abused while in the legal custody of State Defendants. Rather, John Doe #225 was abused at YDC after an employee of YDC brought him to the YDC premises for purposes of abusing him there. Accordingly, John Doe #225's complaint could not accurately incorporate the allegations of the Master Complaint.

21. For these reasons, Plaintiffs first moved to file First Amended Complaints for each of these three Plaintiffs and then moved to sever their cases from the YDC Consolidated Cases. The Court granted leave to amend in all three cases. On October 28, 2022, John Doe #26, John Doe #225, and John Doe #373 each filed separate and independent First Amended Complaints in their respective individual dockets. Their respective First Amended Complaints each allege standalone claims that do not incorporate the allegations or causes of action of the Master Complaint. While the claims asserted against State Defendants by these three Plaintiffs are similar to the claims being litigated in the Consolidated YDC Cases, they are not the same and rely on different theories. The First Amended Complaints of these three Plaintiffs assert separate and distinct claims from those alleged in the Master Complaint

22. After Plaintiffs' counsel sought concurrence on their motion for several weeks, State Defendants eventually sent Plaintiffs' counsel a revised Motion to Sever. State Defendants sought to modify the motion to sever to clarify either that the cases would not be severed until after the Court's ruling on State Defendants' pending motions to dismiss or, alternatively, that the Court's order on State Defendants' motions to dismiss would apply to the severed cases. Plaintiffs declined to revise the Motion to Sever and filed it over State Defendants' objection on November 22, 2022. That motion remains pending.

23. Plaintiffs' position is that since John Doe #26, John Doe #373, and John Doe #225's cases were never appropriate for consolidation under this Court's Consolidation Order, they should be severed and transferred to Merrimack with the other "private placement only" cases. Plaintiffs agree that this Court's forthcoming order on State Defendants' motions to dismiss in the YDC Consolidated Cases is likely to be instructive as to similar legal issues in those cases (i.e., State Defendants' sovereign immunity arguments). But inasmuch as State Defendants' motions to dismiss are targeted solely at the Master Complaint field in the YDC Consolidated Cases, and these three cases do not incorporate any of the allegations of the Master Complaint, it is not appropriate to definitively rule on the claims in these cases. Some aspects of this Court's rulings in the YDC Consolidated Cases may be persuasive to the Court considering motions in the "private placement only" cases, but they should not be binding.

24. On January 3, 2023, undersigned counsel filed a complaint in Merrimack Superior Court, Case No. 217-2023-CV-00002, for Jane Doe #73. Undersigned filed the case outside of the YDC Consolidated Cases because Jane Doe #73 alleges that she was abused solely at the Saddleback Retreat, a privately-operated placement. Accordingly, her complaint does not incorporate the claims of the Master Complaint.

25. Nevertheless, on January 8, 2023, the Court issued an Order Transferring Venue, stating that Jane Doe #73's case falls within the Consolidation Order, and transferring the case to Rockingham Superior Court.

26. Based on the Court's *sua sponte* transfer of Jane Doe #73's case to the YDC Consolidated Cases, on January 13, 2023, undersigned filed a Motion to Clarify Consolidation Order asking for clarification as to whether the Consolidation Order remains operative or whether counsel for Plaintiffs have somehow misconstrued that order.

27. Plaintiffs' counsel sought State Defendants' position on the matter, but again counsel for State Defendants have been elusive. As of this date, State Defendants have still not informed Plaintiffs' counsel as to their position.

III. Update on Discovery and Motion to Compel

28. Plaintiffs have received from State Defendants several voluntary productions of documents that together constitute millions of pages; the documents are scans from paper archives from various DHHS storage repositories. The materials are accompanied by basic indices generated by a vendor, however, through the meet-and-confer process, it has become clear that the materials had not undergone any individualized responsiveness review by counsel for State Defendants prior to their production. Given the volume, the limited search capability (generally the index can be searched by term, but the underlying documents are not uniformly searchable), the use of the voluntary productions has been time-consuming and cumbersome.

29. In effect, these voluntary productions were strategic document dumps by State Defendants, as it appears these documents were retrieved from the YDC basement with no discernable organization. State Defendants have represented that some relevant and responsive

documents exist within the millions of pages produced, but they have declined to inform Plaintiffs precisely where to find them.

30. Plaintiffs have attempted to gather specific materials by issuing three Requests for Production of Document that sought to prioritize certain types of documents. While State Defendants issued written objections and responses to those Document Requests, no specifically-responsive documents have been forthcoming. For example, as to policies and procedures purportedly governing YDC, a basis request in a matter of this nature, State Defendants have refused to identify such policies in a listing. Instead, State Defendants have claimed that providing the scans of millions of pages from the YDC basement, without identifying where responsive information is located, is sufficient to meet the applicable discovery obligations. It is not. Plaintiffs requests for production of documents are specific, targeted, and routine in a case such as this, and yet State Defendants continue to hide the ball.

31. Plaintiffs are filing a motion to compel seeking an order from this Court that would explicitly require State Defendants to undertake their responsibility to review and the documents they are producing and identify where in their massive productions specifically requested documents are located.

IV. Proposal for Contractor Defendant Responsive Pleadings

32. As noted above, *infra* Part I, several Contractor Defendants have been served with Short Form Complaints asserting supplemental claims in the YDC Consolidated Cases, and Plaintiffs anticipate serving additional third-party contractors in the coming weeks.

33. While each Plaintiff's Short Form Complaint alleges individual claims arising from different facts and circumstances, the legal claims and the injuries asserted are similar across all cases. In each case, Plaintiffs allege that State Defendants owed special, nondelegable duties,

including fiduciary duties, to Plaintiffs when State Defendants took legal and physical custody and control of Plaintiffs, removing them from their families and/or guardians when they were children and fully dependent upon the State to care for and protect them. Those duties continued when State Defendants sent Plaintiffs to live in private facilities operated by third parties (Contractor Defendants) who contracted with the State to provide residential and rehabilitative services to children in State custody. Moreover, once those Contractor Defendants assumed physical custody and control of Plaintiffs, they too accepted special duties, including fiduciary duties, with respect to those children in their custody.

34. Because the supplemental causes of action alleged against each of the Contractor Defendants are the same, and arise from very similar factual circumstances (i.e., various acts of physical, sexual, and psychological abuse perpetrated against each Plaintiff by employees and agents of Contractor Defendants), it stands to reason that the Contractor Defendants will raise similar, if not identical arguments, in any motions to dismiss that they may file.

35. Additionally, this Court is currently considering State Defendants' two motions to dismiss the Master Complaint and will hear oral arguments on those motions during the January 27, 2023 hearing. While State Defendants have raised defenses, such as sovereign immunity defenses, that only apply to State agencies, several of State Defendants' arguments (i.e., challenges attacking the validity of certain causes of action, challenges regarding the sufficiency of allegations of the Master Complaint, and challenges relating to statute of limitations defenses) may have applicability to the claims asserted against Contractor Defendants as well. In short, it is very likely that the Court's ruling on State Defendants' motions to dismiss will be instructive with regard to the claims asserted against Contractor Defendants.

36. Accordingly, in the interest of judicial economy, Plaintiffs propose that the Court issue an order regarding responsive pleadings for Contractor Defendants that provides as follows:

- a. That the Court continue to suspend all Contractor Defendants' responsive pleading deadlines until the earliest of April 28, 2023, or the issuance of this Court's decision on State Defendants' motions to dismiss the Master Complaint.
- b. That within three weeks of that date, Plaintiffs and all Contractor Defendants (all third-party contractors served in at least one consolidated case as of that date) must meet and confer with regard to a consolidated briefing schedule for any motions to dismiss any such Contractor Defendants may wish to file.
- c. That within that three-week period, Plaintiffs and Contractor Defendants must either file a joint, proposed briefing schedule or, if they cannot agree, competing proposals.
- d. That the goal of any such briefing schedule proposals should be the consolidation of issues to be decided by motion so that Plaintiffs are not required to respond to, and the Court is not required to rule on, multiple motions raising identical or nearly identical issues.
- e. Additionally, to the extent any Contractor Defendants desire to answer the complaints filed against them rather than file a motion to dismiss, they may do so at any time.
- f. The Answer deadline applicable to all Contractor Defendants shall be 60 days from the Court's latest Notice of Decision on Motions to Dismiss filed by this category of defendants.

V. Plaintiffs' Motion to Set Initial Trial Dates

37. Plaintiffs yesterday 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 proposes 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 requests four trial dates in 2024 and suggests that consolidated trials of five or six Plaintiffs at a time would be preferable.

Respectfully submitted,

PLAINTIFFS

Dated: January 26, 2023

By and through counsel,

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

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CERTIFICATE OF SERVICE

I certify that on January 26, 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/ Allison K. Regan

Allison K. Regan, Esq.