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The Honorable Barbara J. Rothstein

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

D.S. by and through her next friend
TARA URS; *et al.*,

Plaintiffs,

v.

WASHINGTON STATE
DEPARTMENT OF CHILDREN,
YOUTH, AND FAMILIES; *et al.*,

Defendants.

NO. 2:21-cv-00113-BJR

STIPULATION AND ORDER
REGARDING DEFINITION OF
CLASS ACTION AND
AMENDMENT TO
SCHEDULING ORDER

I. STIPULATION

The parties, by and through their respective attorneys of record, hereby stipulate to the following:

1. The parties agree that this matter is appropriate to proceed as a class action under Fed. R. Civ. P. 23(a) and (b)(2). The parties stipulate to certification of a class defined as:

Individuals who are or in the future will:

- a. Be under the age of 18; AND

1 b. Be in DCYF's placement during a dependency proceeding under Wash. Rev.
2 Code 13.34 until the proceeding is dismissed; AND

3 c. ONE OR MORE OF THE FOLLOWING:

- 4 i. Have experienced five (5) or more placements, excluding trial return
5 home, in-home dependencies, and temporary placements. Temporary
6 placements under this stipulation and order shall mean any of the
7 following: overnight stay with a parent, hospital, respite care, youth
8 camps, on runaway status, or detention. Temporary placements do not
9 include a hotel stay, an office stay, or a night-to-night foster care
10 placement. But an individual shall not be counted to have five (5) or more
11 placements under this section if they have been in the same placement for
12 the last twelve or more months, except if that placement was in a Qualified
13 Residential Treatment Program (QRTP); OR
- 14 ii. Have been referred for or are in out-of-state group care placement; OR
- 15 iii. Have experienced a hotel or office stay in the past six (6) months; OR
- 16 iv. Are awaiting a Children's Long-Term Inpatient Program (CLIP) bed.

17 2. The parties stipulate that the individuals who meet the above definition are too
18 numerous for joinder to be practicable and share common questions of law and fact. The Named
19 Plaintiffs' claims are typical of the class, and none of them have interests in material conflict
20 with the class. The Named Plaintiffs and their Counsel will adequately protect the interests of
21 the class. The parties further agree any injunctive or corresponding declaratory relief would be
22 appropriate with respect to the class as a whole.

23 3. The parties reserve the right to amend the order below under Fed. R. Civ. P. 23,
24 including the ability to seek decertification of the class.

25 4. The parties agree that the current pretrial schedule (Dkts. # 22, 61 and 67) should
26 be amended as follows:

- a. Discovery is stayed until October 26, 2021;
- b. Reports from expert witnesses under Fed. R. Civ. P. 26(a)(2) are to be served on or by January 7, 2022;
- c. Initial deadline for completed discovery (from Dkt. # 22) is February 7, 2022;
- d. All dispositive motions are to be filed on or by March 8, 2022;
- e. Opposition for dispositive motions (per Dkt. # 16 briefing schedule) is to be filed on or by March 29, 2022; and
- f. Replies for dispositive motions (per Dkt. # 16 briefing schedule) are to be filed on or by April 12, 2022;

5. The parties agree that this Court should enter an order that approves and adopts this stipulation.

RESPECTFULLY SUBMITTED this 17th day of September, 2021.

PLAINTIFFS' COUNSEL

ROBERT W. FERGUSON
Attorney General

s/ Susan Kas
 SUSAN KAS, WSBA No. 36592
 Disability Rights Washington
 CHRISTOPHER CARNEY,
 WSBA No. 30325
 Carney Gillespie PLLC
 LEECIA WELCH, WSBA No. 26590
 POONAM JUNEJA, CA Bar ID No.
 300848, *admitted pro hac vice*
 FREYA PITTS, CA Bar ID No. 295878,
admitted pro hac vice
 JEAN STROUT, CA RLSA No. 804338,
admitted pro hac vice
 National Center for Youth Law
 LAURA LIN, CA Bar ID No. 281542,
admitted pro hac vice
 ELIZABETH DOUGLAS, CA Bar ID
 No. 331031, *admitted pro hac vice*
 Munger, Tolles & Olson, LLP

s/ Daniel J. Judge
 DANIEL J. JUDGE, WSBA No. 17392
Senior Counsel
 WILLIAM MCGINTY, WSBA No. 41868
 JAMES M. RICHARDSON III,
 WSBA No. 45095
Assistant Attorneys General

Attorneys for Defendants

Attorneys for Plaintiffs

II. ORDER

IT IS HEREBY ORDERED that:

The stipulation of the parties is APPROVED AND ADOPTED as follows:

1. Under Fed. R. Civ. P. 23(a) and (b)(2), the Court certifies a class defined as:

Individuals who are or in the future will:

- a. Be under the age of 18; AND
- b. Be in DCYF's placement during a dependency proceeding under Wash. Rev. Code 13.34 until the proceeding is dismissed; AND
- c. ONE OR MORE OF THE FOLLOWING:
 - i. Have experienced five (5) or more placements, excluding trial return home, in-home dependencies, and temporary placements. Temporary placements under this stipulation and order shall mean any of the following: overnight stay with a parent, hospital, respite care, youth camps, on runaway status, or detention. Temporary placements do not include a hotel stay, an office stay, or a night-to-night foster care placement. But an individual shall not be counted to have five (5) or more placements under this section if they have been in the same placement for the last twelve or more months, except if that placement was in a Qualified Residential Treatment Program (QRTP); OR
 - ii. Have been referred for or are in out-of-state group care placement; OR
 - iii. Have experienced a hotel or office stay in the past six (6) months; OR
 - iv. Are awaiting a Children's Long-Term Inpatient Program (CLIP) bed.

2. Based on the foregoing parties' stipulation, the Court finds:

- a. The Class is so numerous that joinder of all members is impracticable;

- b. There are questions of law and fact common to the Class;
- c. The claims of the Named Plaintiffs are typical of those of members of the Class;
- d. The Named Plaintiffs and Plaintiffs' Counsel will fairly and adequately represent and protect the interests of the members of the Class; and
- e. Final injunctive relief and any corresponding declaratory relief is appropriate with respect to the Class as a whole.

3. The Court appoints D.Y., by and through his Next Friend Julie Kellogg Mortensen, H.A., by and through his Next Friend Kristen Bishopp, and D.S., by and through her Next Friend Tara Urs, as Class Representatives. Disability Rights Washington, National Center for Youth Law, Carney Gillespie PLLP, and Munger, Tolles and Olson LLP are appointed Class Counsel.

4. The parties reserve the right to amend this order under Fed. R. Civ. P. 23, including the ability to seek decertification of the class.

5. The pretrial schedule (Dkts. # 22, 61 and 67) should be AMENDED as follows:

- a. Discovery is stayed until October 26, 2021;
- b. Reports from expert witnesses under Fed. R. Civ. P. 26(a)(2) shall be served on or by January 7, 2022;
- c. Initial deadline for completed discovery (from Dkt. # 22) is February 7, 2022;
- d. All dispositive motions shall be filed on or by March 8, 2022;
- e. Opposition for dispositive motions (per Dkt. # 16 briefing schedule) shall be filed on or by March 29, 2022; and
- f. Replies for dispositive motions (per Dkt. #16 briefing schedule) shall be filed on or by April 12, 2022;

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1 The Clerk is directed to forward copies of this Order to the parties in this matter.

2 Entered this 22nd day of September, 2021.

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BARBARA J. ROTHSTEIN
5 UNITED STATES DISTRICT JUDGE

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