

# 05-7010-cv

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IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

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BRUCE CHAPMAN and HANDLE WITH CARE  
BEHAVIOR MANAGEMENT SYSTEM, INC.,  
*Plaintiffs-Appellants,*

*- against -*

NEW YORK STATE DIVISION FOR YOUTH, NEW YORK STATE  
OFFICE OF CHILDREN & FAMILY SERVICES, NEW YORK STATE  
DEPARTMENT OF SOCIAL SERVICES, JOHN JOHNSON,  
Commissioner of New York State Office of Children and Family Services  
and former Commissioner of the New York State Division for Youth, in  
his official and individual capacity, MARGARET DAVIS, former Director  
of Training for the New York State Division for Youth, and former  
Director of Training for New York State Office of Children and Family  
Services, in her official and individual capacity, PATSY MURRAY, former  
Associate Training Technician for the New York State Division for Youth,

*(Caption Continued on Inside Cover)*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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**PETITION FOR PANEL REHEARING**  
**PETITION FOR REHEARING *EN BANC***

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GUY L. HEINEMANN, P.C.  
260 Madison Avenue  
New York, New York 10016  
(212) 753-1400

HILARY ADLER  
LAW OFFICES OF HILARY ADLER  
184 McKinstry Road  
Gardiner, New York 12525  
(845) 255-4031

*Attorneys for Plaintiffs-Appellants*  
*Bruce Chapman and Handle With Care Behavior Management System, Inc.*

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and current position as Trainer for New York State Office of Children and Family Services, in her official and individual capacity, CORNELL UNIVERSITY, JEFFREY LEHMAN, President of Cornell University, in his official and individual capacity, DOCTOR HUNTER RAWLINGS, III, former President of Cornell University, in his official and individual capacity, NEW YORK STATE COLLEGE OF HUMAN ECOLOGY, FAMILY LIFE DEVELOPMENT CENTER, RESIDENTIAL CHILD CARE PROJECT, THERAPEUTIC CRISIS INTERVENTION, MARTHA HOLDEN, Project Director of the Residential Child Care Project and Therapeutic Crisis Intervention Trainer and Coordinator, in her official and individual capacity, MICHAEL NUNNO, Project Director of the Residential Child Care Project and Therapeutic Crisis Intervention Trainer and Coordinator, in his official and individual capacity, HILLSIDE CHILDREN'S CENTER, DENNIS RICHARDSON, President and CEO of Hillside Children's Center, in his official and individual capacity, DOUGLAS BIDLEMAN, employee of Hillside Children's Center and Therapeutic Crisis Intervention Trainer, in his official and individual capacity,

*Defendants-Appellees.*

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**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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**BRUCE CHAPMAN, *et al.*,**

**Docket No.: 05-7010**

***Plaintiffs-Appellants***

***-against-***

**NEW YORK STATE DIVISION FOR  
YOUTH, *et al.*,**

**CORPORATE  
DISCLOSURE  
STATEMENT  
UNDER RULE 26.1**

***Defendants-Appellees***

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Pursuant to Fed. R. App. P. Rule 26.1, the undersigned counsel of record for Plaintiff-Appellant Handle With Care Behavior Management System, Inc. submits this statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of its stock.

Parent Companies: None

Publicly Held Companies Owning 10% or More of Handle With Care Behavior Management System, Inc.'s Stock: None

Dated: New York, NY  
December 2, 2008

Respectfully Submitted,  
**GUY L. HEINEMANN, P.C.**

By: 

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Guy L. Heinemann  
260 Madison Avenue -17th Floor  
New York, NY 10016  
(212) 753-1400  
*Attorneys for Plaintiffs-Appellants  
Bruce Chapman and Handle with  
Care Behavior Management System,  
Inc.*

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**STATEMENT PURSUANT TO FED. R. APP. PRO. 35(b)(1)(A)**

The Panel Decision (sometimes “Decision”) conflicts with decisions of the Supreme Court and this Court, and consideration by the full Court is therefore necessary to secure and maintain uniformity of its decisions.

In particular, the Decision conflicts with *FTC v. Indiana Federation of Dentists*, 476 U.S. 447 (1986); *National Society of Professional Engineers v. United States*, 435 U.S. 679 (1978); *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956); *Freedom Holdings, Inc. v Spitzer*, 357 F.3d 205 (2d Cir. 2004); *PepsiCo, Inc. v. Coca-Cola Co.*, 315 F.3d 101 (2d Cir. 2002); *Todd v. Exxon Corp.*, 275 F.3d 191 (2d Cir. 2001), in that when a plaintiff pleads direct evidence of anticompetitive effects, a flawless relevant market is not crucial to pleading Sherman Act claims.

The Decision also conflicts with *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959) and *Freedom Holdings, supra*, in its rejection of *per se* liability for the collective refusal to deal imposed on the horizontal array of over 80 private entities.

The Decisions’ affirmance of a dismissal with prejudice of a *first* Complaint, without granting leave to amend, also conflicts with *Discon, Inc. v. Nynex Corp.*, 93 F.3d 1055 (2d Cir. 1996), *rev’d on other grounds, Nynex Corp. v. Discon, Inc.*, 525

U.S. 128 (1998) and *Freedom Holdings, supra*.

### **PRELIMINARY STATEMENT**

Plaintiff-Appellant Handle With Care Behavior Management System, Inc. (“HWC”) petitions for Panel Rehearing and Rehearing En Banc so this Court may review the Decision that affirmed the dismissal with prejudice of antitrust claims in HWC’s *only* Complaint, notwithstanding HWC’s factually specific allegations of collective conduct constituting, *inter alia*, “monopoly control” and “systematic[ ] refus[al]” to allow other competition (C ¶¶ 34, 86, 88-90).<sup>1</sup> The Complaint even recited direct evidence of anticompetitive effects from Defendants’ conduct on the numerous private foster care agencies in New York, including prices *more than four times* charged other customers (C ¶¶ 40, 91-92, 97). The Decision’s affirming the dismissal without leave to amend also conflicts with precedents of this Court that command liberality in granting leave to amend -- *especially* in complex antitrust cases. Finally, the Panel also misapprehended the relevant market asserted by HWC.

### **BACKGROUND**

HWC is a provider of restraint training to public and private agencies in New York State and elsewhere. HWC alleged collective conduct by Defendants Cornell

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<sup>1</sup> The Complaint (“C”) is located at A-25 through A-45 of the Appendix. The District Court’s opinion is reported at 2005 WL 2407548 and is reproduced at A-296 - A-315 of the Appendix. The Panel Decision (annexed hereto) is also reported at 2008 WL 4558047.

University (“Cornell”), The New York State College of Human Ecology (“CHE”) and a state agency now known as the New York State Office of Children and Family Services (“OCFS”). Defendants’ collective conduct, persisting over twelve years, consisted of an agreement under which OCFS refused regulatory approval of the restraint policies of the more than 80 privately-owned and autonomous foster care agencies (“PFAs”)<sup>2</sup> throughout New York State -- *unless* the PFAs contracted with Cornell and CHE to use their “Therapeutic Crisis Intervention” (“TCI”) program to provide restraint training to PFA staff (C ¶¶ 35, 87, 90; A-48, A-95-A-102, A-124-A-136). This coercive policy was inconsistent with OCFS regulations governing the PFAs, which are responsible for their own management, including restraint training.<sup>3</sup>

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<sup>2</sup> This number is estimated from “New York State Office of Children and Family Services Standards of Payment System for Foster Care of Children,” available at <http://www.ocfs.state.ny.us/main/rates/fostercare/rates/fc-voluntary07-07.pdf>. PFAs are the principal institutions in New York State that take in foster children, with thousands of New York children in their care. The Complaint used various terms to describe the PFAs, such as “child care providers” (¶ 23) and “private child care providers” (¶ 31), but they are defined as “voluntary authorized agencies.” N.Y. Soc. Serv. Law §§ 371(10)(a) and (c). For simplicity, as in HWC’s briefs, they are hereinafter referred to as “PFAs.”

<sup>3</sup> This autonomy is manifest from N.Y. Soc. Serv. Law § 460-a and 18 N.Y.C.R.R. §§ 441.3, 482.3. The “board of directors” of a PFA “shall manage the affairs of such agency (18 N.Y.C.R.R. § 441.3(a)(1)), “assur[ing] the proper care of children for whom such agency is responsible.” 18 N.Y.C.R.R. § 441.3(a)(4)(iii). The PFAs’ “chief executive officer” (“CEO”) is responsible to the board for the administration of the PFA, 18 N.Y.C.R.R. § 441.3(a)(4)(i), including the responsibility to “direct, evaluate and coordinate all aspects of [a PFA’s restraint training] program,” including “staff development *and training*.” 18 N.Y.C.R.R. § 441.3(c)(1) (emphasis added). PFAs must submit their restraint policies to OCFS for approval (C ¶¶ 82-84). 18 N.Y.C.R.R. § 441.17. *See also* HWC’s Principal Brief (“PrBr”) at 10-12.

Defendants have not presented the slightest *pretense* of some putative goal of efficiency, quality or any *legitimate* interest in imposing the expensive TCI program on the PFAs.<sup>4</sup> Various tactics employed to enforce this exclusion included threats of adverse regulatory and licensing actions (C ¶¶ 70-74, 88-90).<sup>5</sup> Defendants did not deny that this was manifestly anticompetitive behavior, conceding below that the Complaint “may be broadly and liberally construed to alleged [sic] anticompetitive conduct,” and acknowledging that a dismissal without leave to amend is appropriate only “in *extraordinary* circumstances” (Docket No. 51 at 10, 15; emphasis added). HWC alleged both injury to competition<sup>6</sup> and its own antitrust injury.

This exclusion also allowed Cornell and CHE to charge more than *four times* the price charged other (*i.e.*, non-OCFS-regulated) customers.<sup>7</sup> OCFS, Cornell and

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<sup>4</sup> In addition to price competition, quality competition was also suppressed. *E.g.*, portions of the record indicate that HWC’s program is preferred over TCI (A-174 - A-176, A-227 - A-230, A-252 - A-257; PrBr at 35 n.3).

<sup>5</sup> OCFS also approves PFA corporate charters. N.Y. Soc. Serv. Law § 460-a; 18 N.Y.C.R.R. §§ 441.17(c), 477.1, 477.4. *See also* C ¶¶ 82, 89; PrBr at 10-15; HWC’s Reply Brief (“RepBr”) at 5-6, 51-54.

<sup>6</sup> HWC asserted that other vendors have also been excluded (C ¶¶ 38, 70, 73, 89; PrBr at 13-15, 19-20). *See also* District Court opinion at A-302 - A-303, A-306.

<sup>7</sup> Defendants did not put forward any justification for this supracompetitive pricing. PrBr at 13, 15, 34. Defendants did submit a 1994 “Memorandum of Agreement” (“MOA”) between Cornell and OCFS, of which the most explicit goal was to help *maximize* federal funding for the Defendants’ sale of TCI (C ¶¶ 91-91; A-141; RepBr at 7-10, 19). Defendants contented that the MOA cloaked their behavior in state action immunity from antitrust laws, but the MOA was null and void because it was not approved by the State Comptroller pursuant to N.Y. Fin. Law § 112. This was determined by the State Attorney General on September 14, 2005 (shortly before the

CHE all benefitted financially from these supracompetitive prices because federal reimbursement covers 75% of the (legitimate) cost of this training (C ¶¶ 92, 96-97; PrBr at 15 n.9, 31; RepBr at 15 n.15, 29, 37 n.32). Hence, instead of seeking competitive prices, OCFS had a strong incentive to *favor* the high prices for TCI and the exclusion of other vendors because OCFS is repaid most of the “cost” of Cornell’s overpriced TCI training under Title IV-E of the Social Security Act (C ¶¶ 14, 35; PrBr at 30-32; Rep.Br. at 15, 29, 37 n.32).<sup>8</sup>

HWC had only one chance to plead its antitrust claims, as the District Court dismissed them with prejudice and the Panel affirmed.<sup>9</sup> The Panel Decision did not review HWC’s allegations of *per se* liability nor, *per se* liability aside, HWC’s allegation that the supracompetitive pricing and exclusion of competition had an “actual anticompetitive effect” (PrBr at 36). The Decision simply held that HWC had failed to allege a “properly defined” relevant market, which it found fatal *to all* of HWC’s antitrust claims.

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District Court’s dismissal, but without any Defense counsel bringing it to the District Court’s attention). Formal Opinion 2005-F2, 2005 WL 2332807 (N.Y.A.G.). See RepBr at 7-10.

<sup>8</sup> Cornell and CHE have also benefitted financially from this arrangement, but illegally so (C ¶¶ 14, 35; PrBr at 30-32). *I.e.*, OCFS has fraudulently overbilled the federal government for these “costs.” See Amended Complaint in *United States of America ex rel. Chapman v. Cornell University, et al.*, 1:04-CV-1505 (N.D.N.Y. 2005), brought under the *qui tam* provisions of the False Claims Act, 31 U.S.C.A. §§ 3729 *et seq.* at ¶¶ 98-102, 122.

<sup>9</sup> The Panel consisted of Circuit Judges Straub, Walker and Pooler.

## ARGUMENT

The Panel Decision places beyond the reach of the Sherman Act collective conduct by three entities that forced the selection of Cornell and CHE as the vendor of restraint training for the over 80 PFAs, each independently responsible for the safety of children in their care. The Decision conflicts with decisions of the Supreme Court and this Court in that the Complaint demonstrated direct evidence of anticompetitive effects sufficient to sustain violations of *both* Sections One and Two -- even without a relevant market analysis.

Moreover, the dismissal with prejudice of HWC's first -- and only -- Complaint conflicts with decisions of this Court requiring liberality in granting leave to amend under Fed. R. Civ. Pro. 15(a)(2). If adhered to, the decision would essentially transform 12(b)(6) reviews of antitrust complaints into summary judgments.

### POINT I

#### **THE PANEL DECISION WRONGLY CONCLUDED THAT HWC'S ANTITRUST CLAIMS WERE DEPENDENT ON FLAWLESSLY PLEADING A RELEVANT MARKET**

HWC's Complaint clearly described the anticompetitive nature of the Defendants' misconduct, including that Defendants had "monopoly control," had "systematically refus[ed]" to allow PFAs to hire vendors other than Cornell and CHE (C ¶¶ 34, 86, 88-90), and had actually caused supracompetitive pricing (C ¶¶ 40, 90-

92, 97). These kinds of factual allegations at the pleading stage obviate any exposition of the effect on a relevant market. As a leading scholar has explained, “Market definition is *not a jurisdictional prerequisite*, or an issue having its own significance under the statute; it is *merely an aid* for determining whether power exists.” L. Sullivan, *Handbook of Antitrust Law* 41 (1977) (emphasis added).

**A. Section One Liability**

As this Court held in *Todd v. Exxon Corp.*, 275 F.3d 191, 206 (2d Cir. 2001), “[i]n this Circuit, a threshold showing of market share is not a prerequisite for bringing a § 1 claim . . . .” Quoting *K.M.B. Warehouse Distributors, Inc. v. Walker Mfg. Co.*, 61 F.3d 123, 129 (2d Cir. 1995), *Todd* further explained, “[i]f a plaintiff can show an *actual adverse effect on competition* . . . we do not require a further showing of market power.” 275 F.3d at 206-07 (emphasis added). Relying on *Capital Imaging Assocs. v. Mohawk Valley Med. Assocs.*, 996 F.2d 537, 546 (2d Cir. 1993), *Todd* also held that an antitrust plaintiff “may *avoid* a ‘detailed market analysis’ by offering ‘proof of actual detrimental effects . . . .’” 275 F.3d at 207 (quoting *FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 460-61 (1986); emphasis added).

Within the four corners of HWC’s Complaint, very specific -- and “actual” -- adverse effects on competition were pleaded: supracompetitive prices and the horizontal exclusion of vendors competing to provide restraint training to the over 80

PFA in New York State. *Either* sustains the Section One claims under the Rule of Reason. *See, e.g., FTC v. Indiana Federation of Dentists, supra* (horizontal agreement to withhold particular services from customers); *National Society of Professional Engineers v. United States*, 435 U.S. 679, 692 (1978) (horizontal agreement to refuse to negotiate prices).

Moreover, the fact that OCFS, with Cornell and CHE, *imposed* the horizontal exclusion of all other vendors is of no importance. *324 Liquor Corp. v. Duffy*, 479 U.S. 335, 345-46 n.8 (1987) (holding Section One claims made out by state action compelling private parties to engage in anticompetitive behavior, calling this a “hybrid” restraint). *Accord Freedom Holdings, Inc. v. Spitzer*, 357 F.3d 205, 223-24 (2d Cir. 2004).<sup>10</sup>

## **B. Section Two Liability**

Pleading a relevant market is likewise not always necessary for a Section Two claim. *PepsiCo, Inc. v. Coca-Cola Co.*, 315 F.3d 101, 107 (2d Cir. 2002). *PepsiCo* cited *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 391(1956) and

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<sup>10</sup> *Freedom Holdings* rejected a claim of state action immunity where, as here, there was “no mechanism . . . whereby New York may review the reasonableness of the pricing decisions of [the parties].” 357 F.3d at 231 (internal quotation marks and citation omitted). Accordingly, the exhortation of two antitrust scholars is appropriate here: “Private parties who restrain trade pursuant to government directives do so at their peril.” J. Lopatka & W. Page, *State Action and the Meaning of Agreement Under the Sherman Act: An Approach to Hybrid Restraints*, 20 Yale J. Reg. 269, 292 (2003).



*Tops Markets, Inc. v. Quality Markets, Inc.*, 142 F.3d 90, 98 (2d Cir. 1998), “noting that monopoly power ‘may be proven directly by evidence of the control of prices or the exclusion of competition . . . .’” 315 F.3d at 107.<sup>11</sup>

### C. Per Se Liability

The above analysis also places the antitrust misconduct alleged squarely in the *per se* category of a group boycott under *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 212 (1959).<sup>12</sup> See also *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 136 (1998). Although the group boycott by all PFAs was *imposed* upon them, that is no matter. See discussion of 324 *Liquor and Freedom Holdings, supra*. A vertically imposed group boycott is thus as actionable *per se* as one voluntarily organized by a horizontal group of sellers or buyers.

## POINT II

### **THE DISTRICT COURT’S DISMISSAL WITH PREJUDICE WAS AN ABUSE OF DISCRETION AND WRONGLY HELD THAT LEAVE TO AMEND WOULD BE “FUTILE”**

The Panel Decision was simply wrong to let stand the District Court’s dismissal with prejudice. This Court has a long history of recognizing the

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<sup>11</sup> See also 2A Phillip E. Areeda, *et al.*, *Areeda & Hovenkamp’s Antitrust Law*, ¶ 531a at 156 (2002) (stating that a relevant market definition simply serves as a “surrogate” for market power).

<sup>12</sup> HWC alleged *per se* liability in the alternative, as the District Court recognized. District Court opinion at A-311 - A-312. See also PrBr at 36; RepBr at 44.

vicissitudes of parties' attempts to plead antitrust violations. Indeed, the decision below resembles the dismissal reversed by this Court in *Discon, Inc. v. Nynex Corp.*, 93 F.3d 1055 (2d Cir. 1996), *rev'd on other grounds*, *Nynex Corp. v. Discon, Inc.*, 525 U.S. 128 (1998). In *Discon*, this Court held, "In this case, we believe that the District Court may have been misled by a poorly drafted complaint into categorizing the arrangement as one that is presumptively legal."<sup>13</sup> 93 F.3d at 1059 (C.J. Newman). This Court even found that the *Discon* complaint "states a cause of action under Section One of the Sherman Act, though under a *different legal theory* than the one articulated by *Discon*." *Id.* (emphasis added). Although the Supreme Court reversed on the merits, it did not question this Court's duty to review antitrust complaints such that they may "properly be understood to allege arrangements that *might be shown* to be unlawful . . ." *Id.* (emphasis added).

As Judge Winter more recently wrote in another case involving antitrust claims:

It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of [ ] mere technicalities. "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of

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<sup>13</sup> Appellate Counsel for HWC has conceded that, as to the precise theories of liability, the Complaint was not a model of clarity -- although the *factual* allegations were certainly clear enough to put Defendants on notice of the alleged misconduct (PrBr at 23).

pleading is to facilitate a proper decision on the merits.’

*Freedom Holdings, Inc. v. Spitzer, supra*, 357 F.3d at 235 (internal citations omitted).

HWC well appreciates that after the briefs in this appeal were filed, the Supreme Court decided *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007). *See* Panel Decision at 5340. However -- and here the Panel Decision grievously misses this point -- even though *Twombly* may have added to the pleading standard of Fed. R. Civ. Pro. 8(a)(2) the patina of “above the speculative level,” *Twombly* left *untouched* Rule 15(a)(2)’s command to “freely give leave [to amend].”<sup>14</sup>

As noted, the *factual* details in HWC’s Complaint sufficed to describe antitrust misconduct, while the specific antitrust *legal* theories were not precise. Accordingly, the language of then-Chief Judge Newman in *Discon* continues as a beacon:

This appeal typifies one of the primary difficulties in the judicial application of antitrust law. Under Section One of the Sherman Act, courts are asked to categorize various complex commercial arrangements into a rigid legal taxonomy, *e.g.*, horizontal restraint, vertical restraint, price-fixing, market division, concerted refusal to deal, and so on. This initial categorization is often outcome-determinative. Under one category, the arrangement may be *per se* illegal, while under another, it may be found permissible under the rule of reason. Due to the complexity of modern business transactions, however, courts often find that commercial arrangements can be classified theoretically under a number of different categories. (“[E]asy labels do not always supply

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<sup>14</sup> Notably, in *Twombly* and *Discon*, this Court’s review of the sufficiency of the complaint was of an already *amended* complaint. HWC is entitled to no fewer opportunities to articulate more precisely the theories of antitrust liability that the *facts* in the original Complaint would support.

ready answers.”).

93 F.3d at 1058-59 (emphasis added; internal citation omitted).

The Decision’s sole reliance on *Queen City Pizza, Inc. v. Domino’s Pizza, Inc.*, 124 F.3d 430 (3d Cir. 1997) is inapposite, and its citation is somewhat surprising. Unlike here, *Queen City* did not deal with a regulated market (see Point III, *infra*), but with a retail franchise arrangement, with which courts have had extensive experience. Nor, unlike here, did the *Queen City* complaint allege facts demonstrating direct evidence of anticompetitive effect. See Argument, Point I, *supra*.<sup>15</sup>

Even after *Twombly*, then, this antitrust case warrants an opportunity to replead. To hold otherwise would undermine the notice pleading basis of federal civil practice. See R. Epstein, *Bell Atlantic v. Twombly: How Motions to Dismiss Become (Disguised) Summary Judgments*, 25 Wash. U. J.L. & Policy 61 (2007).

### **POINT III**

#### **THE PANEL DECISION MISAPPREHENDED HWC’S ASSERTION OF THE RELEVANT MARKET**

In its Complaint, as construed by the District Court, HWC maintained that the

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<sup>15</sup> Notably, the Third Circuit panel decision in *Queen City* was not unanimous. 124 F.3d at 444 (dissenting opinion of Circuit Judge Lay). Nor did the dispute end there, as Circuit Judge Becker wrote a spirited dissent from the order denying *en banc* consideration. 129 F.3d 724 (3d Cir. 1997) (“[E]ven if the majority’s legal position is correct, it can only be sustained if it were an affirmance of a summary judgment on a full record,” rather than a 12(b)(6) motion to dismiss.).

relevant market was the New York State PFAs, as *buyers* of restraint training services. This discrete market is clearly demarcated by the OCFS regulatory regime. As noted, OCFS had not only licensing and regulatory authority over the PFAs, but also the authority -- which it abused -- to approve their restraint training vendors. No PFA can operate in New York without this approval.

In its cursory relevant market analysis, the Decision misapprehended the significance of this regulatory structure. Although it cited *Todd*, the Panel did not afford HWC the deliberation it gave the complaint in *Todd*. At the pleading stage, the Panel could not determine that HWC's market definition was not "plausible." See PrBr at 24-30, 31 n.18, 37; RepBr at 32-45. See also *Chicago Bridge & Iron Co. N.V. v. F.T.C.*, 534 F.3d 410, 438 (5th Cir. 2008), quoting *United States v. Syufy Enters.*, 903 F.2d 659, 673 (9th Cir.1990) ("[S]ome of the most insuperable barriers in the great race of competition are the result of government regulation."); *Rebel Oil Co., Inc. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1439 (9th Cir.1995) (noting one "main source[ ] of entry barriers" is "legal license requirements.").

Defendants' TCI program should face competition in New York State from other vendors. The fact that Cornell and CHE do not face competition, despite charging four times what they charge in a competitive market, clearly manifests that the New York PFAs, as a buyers' market for training, is distinct from the larger

market that the District Court, and this Court, erroneously selected (RepBr at 42).

The Panel Decision failed to consider that the market asserted by HWC is, as mandated by *Todd*, “comprised of buyers *who are seen by sellers as being reasonably good substitutes*.” 275 F.3d at 202 (emphasis added; internal citation omitted). The regulatory strictures on the PFAs controlled by OCFS render them utterly outside the larger market selected by the Panel (Decision at 5344-45).

Finally, in cases where normal competition is confined and restricted by law and regulation, there is less reason to focus on theoretical concepts of interchangeability of use or cross-elasticity of demand, simply because the regulatory environment keeps normally broad market forces at bay.<sup>16</sup>

### CONCLUSION

Antitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms. And the freedom guaranteed each and every business, *no matter how small*, is the freedom to compete -- to assert with vigor, imagination, devotion, and ingenuity whatever economic muscle it can muster.

*United States v. Topco Associates, Inc.*, 405 U.S. 596, 610 (1972) (emphasis added).

For the foregoing reasons, Plaintiff-Appellant HWC respectfully requests

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<sup>16</sup> Moreover, the Panel’s reliance on the opinion of a divided Third Circuit panel in *Queen City, supra* -- dealing with suppliers of pizza dough, which is *not* a regulated market -- was both factually inapposite and reflects an inadequate analysis of the PFAs’ regulatory environment abused by Defendants.

rehearing *en banc* (and, alternatively, by the Panel) and that the Panel Decision be vacated, that a new decision issue reversing the decision of the District Court and vacating its judgment, and, further, that the case be remanded with leave to HWC to replead its antitrust claims in an amended complaint.

Dated: New York, NY  
December 3, 2008

Respectfully submitted,

GUY L. HEINEMANN, P.C.

By: 

Guy L. Heinemann  
Irene M. Vavulitsky  
260 Madison Avenue  
New York, NY 10016  
Tel.: (212) 753-1400

- and -

LAW OFFICE OF HILARY ADLER

By: 

Hilary Adler  
184 McKinstry Road  
Gardiner, NY 12525  
Tel.: (845) 255-4031

*Attorneys for Plaintiffs-Appellant*

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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August Term, 2007

(Argued: October 25, 2007            Decided: October 14, 2008)

Docket No. 05-7010-cv

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BRUCE CHAPMAN AND HANDLE WITH CARE BEHAVIOR MANAGEMENT  
SYSTEM, INC.,

*Plaintiffs-Appellants,*

—v.—

NEW YORK STATE DIVISION FOR YOUTH, NEW YORK STATE OFFICE OF CHILDREN & FAMILY SERVICE, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, JOHN JOHNSON, Commissioner of New York State Office of Children and Family Services, and former Commissioner of the New York State Division for Youth, in his official and individual capacity, MARGARET DAVIS, former Director of Training for the New York State Division for Youth, and former Director of Training for New York State Office of Children and Family Services, in her official and individual capacity, PATSY MURRAY, former Associate Training Technician for the New York State Division for Youth, and current position as Trainer for New York State Office of Children and Family Services, in her official and individual capacity, CORNELL UNIVERSITY, JEFFREY LEHMAN, President of Cornell University, in his official and individual capacity, DOCTOR HUNTER RAWLINGS, III, former President of Cornell University, in his official and individual capacity, NEW YORK STATE COLLEGE OF HUMAN ECOLOGY, FAMILY LIFE DEVELOPMENT



CENTER, RESIDENTIAL CHILD CARE PROJECT, THERAPEUTIC CRISIS INTERVENTION, MARTHA HOLDEN, Project Director of the Residential Child Care Project and Therapeutic Crisis Intervention Trainer and Coordinator, in her official and individual capacity, MICHAEL NUNNO, Project Director of the Residential Child Care Project and Therapeutic Crisis Intervention Trainer and Coordinator, in his official and individual capacity, HILLSIDE CHILDREN'S CENTER, DENNIS RICHARDSON, President and CEO of Hillside Children's Center, in his official and individual capacity, DOUGLAS BIDLEMAN, Employee of Hillside Children's Center and Therapeutic Crisis Intervention Trainer, in his official and individual capacity,

*Defendants-Cross-Defendants-Appellees.*

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B e f o r e :

WALKER, STRAUB, and POOLER, *Circuit Judges.*

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Plaintiffs-appellants seek review of an order of the United States District Court for the Northern District of New York (David N. Hurd, *Judge*) dismissing their copyright and antitrust claims pursuant to Fed. R. Civ. P. 12(b) and (c) and declining to exercise supplemental jurisdiction over their state law claims. The district court dismissed plaintiffs' copyright claims on the basis that a contract unambiguously granted the defendants a perpetual license to copy plaintiffs' materials. We conclude that the contract is ambiguous, and remand the case for further fact-finding on this issue. With regard to plaintiffs' antitrust claims, we agree with the district court that plaintiffs have failed to allege a plausible antitrust market. We therefore affirm the district court's order dismissing plaintiffs' antitrust claims with prejudice.

AFFIRMED in part; VACATED and REMANDED in part.

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GUY L. HEINEMANN, Guy L. Heinemann, P.C. (Irene M. Vavulitsky, Guy L. Heinemann, P.C., and Hilary Adler, Law Offices of Hilary Adler, Gardiner, N.Y., *on the brief*), New York, N.Y., *for Plaintiffs-Appellants*.

ANDREA OSER, Assistant Solicitor General (Daniel Smirlock, Deputy Solicitor General, *on the brief*), for Eliot Spitzer, Attorney General of the State of New York, Albany, N.Y., *for Defendants-Appellees, New York State Division for Youth, New York State Department of Social Services; New York State Office of Children & Family Services, John Johnson; Margaret Davis, and Patsy Murray*.

NELSON E. ROTH (Valerie L. Cross and Norma W. Schwab, *on the brief*) Office of the University Counsel, Ithaca, N.Y., *for Defendants-Appellees, Cornell University, Jeffrey Lehman, Hunter Rawlings, III, New York State College of Human Ecology, Family Life Development Center, Residential Child Care Project, Therapeutic Crisis Intervention, Martha Holden, and Michael Nunno*.

DAVID H. WALSH, Petrone & Petrone, P.C., Syracuse, N.Y., *for Defendants-Appellees, Hillside Children's Center, Dennis Richardson, and Douglas Bidleman*.

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JOHN M. WALKER, JR., *Circuit Judge*:

Plaintiffs-appellants Bruce Chapman and Handle With Care Behavior Management System, Inc., (collectively "HWC") market a training program ("Handle With Care") that teaches individuals a safe technique for physically restraining others. HWC sued three

groups of defendants alleging generally that they had infringed HWC's copyright and adversely affected the market for such restraint services in violation of the antitrust laws.

Specifically, HWC sued various New York state agencies and their officers and agents (collectively "the state defendants"). The state defendants include: the New York State Office of Children and Family Services ("OCFS"), which in 1998 succeeded the New York State Division for Youth ("DFY") and the New York State Department of Social Services ("DSS") also named as defendants; John Johnson, the former Commissioner of DFY and the current Commissioner of OCFS; Margaret Davis, the former Director of Training for DFY and the current Director of Training for OCFS; and Patsy Murray, a former Associate Training Technician for DFY and current Trainer for OCFS.

HWC also sued Cornell University and the New York State College of Human Ecology (the "College") and related persons and entities (collectively "the Cornell defendants"). The Cornell defendants include: Cornell University; Jeffrey Lehman, Cornell's then-current president; Hunter Rawlings III, Cornell's former president; the College and subsidiaries the Family Life Development Center, the Residential Child Care Project, and Therapeutic Crisis Intervention ("TCI"); and Project Directors of the Residential Child Care Project and TCI Trainers and Coordinators, Martha Holden and Michael Nunno.

Finally, HWC sued Hillside Children's Center ("HCC"), a private childcare provider and residential treatment center, and two of its officers, Dennis Richardson, HCC's president, and Douglas Bidleman, HCC's Coordinator for Sociotherapy (collectively "the Hillside defendants").

The state and Cornell defendants moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6), and the Hillside defendants moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(c). The district court granted both motions as to all of plaintiffs' federal claims and declined to exercise supplemental jurisdiction

over the remaining state law claims. The federal claims dismissed were: (1) copyright infringement against the state defendants; and (2) conspiracy to monopolize and restrain trade, together with monopoly, restraint of trade, and unfair competition, against all defendants.

The district court dismissed plaintiffs' copyright claim on the basis that the contract at issue unambiguously granted the state defendants the right to copy plaintiffs' materials indefinitely. We disagree with that conclusion, find the contract ambiguous, and remand the case to the district court to determine the duration of the license to copy plaintiffs' materials granted under the contract.

With regard to the antitrust claims, the district court held that the plaintiffs failed to offer a plausible relevant market in which the defendants monopolized the trade for restraint services or engaged in restraint of trade or unfair competition with respect thereto. We agree that the plaintiffs have failed to define a plausible market and conclude that the plaintiffs cannot establish that the defendants have substantial market power in the market for restraint services properly defined. Accordingly, we affirm the district court's dismissal of plaintiffs' antitrust claims and vacate the district court's dismissal of the copyright claim against the state defendants.

## BACKGROUND

For purposes of reviewing a motion to dismiss, we assume the accuracy of the plaintiffs' allegations in their complaint. *Patane v. Clark*, 508 F.3d 106, 111 (2d Cir. 2007) (per curiam). "[O]ur review is limited to undisputed documents, such as a written contract attached to, or incorporated by reference in, the complaint." *Official Comm. Of Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, L.L.P.*, 322 F.3d 147, 160 n.7 (2d Cir. 2003) (citing *Cortec Indus., Inc. v. Sum Holding, L.P.*, 949 F.2d 42, 47 (2d Cir. 1991)).

OCFS (previously DFY and DSS) operates juvenile facilities and monitors child care providers in the state of New York. The New York legislature mandated that OCFS:

promulgate regulations concerning standards for the protection of children in residential facilities and programs operated or certified by the division, from abuse and maltreatment . . . Such standards shall . . . establish as a priority that: . . . administrators, employees, volunteers and consultants receive training in . . . : the characteristics of children in care and techniques of group and child management including crisis intervention.

N. Y. Exec. Law § 501(12); *see also* N.Y. Soc. Serv. Law § 462(1)(c). To that end, state regulations require that each supervised child care facility “submit[ ] its restraint policy to [OCFS]” and prohibit the use of “any method of restraint unless it has . . . been approved in writing by [OCFS].” 18 N.Y. Comp. Codes R. & Regs. § 441.17(c).

In 1987, New York State purchased HWC’s method for use in its own facilities. That year, DFY contracted with HWC to provide training in HWC’s methods to its staff (the “1987 contract”). The 1987 contract provided that HWC would train 120 DFY staff members over fifteen days in HWC’s methods. It further provided that HWC would furnish DFY with one “copy of Handle With Care (copyrighted) which [DFY] may reproduce in whole or in part as required by [DFY]” and “a videomaster of the restraint program to be used by [DFY’s] master trainers in conducting training programs for facility staff.” Finally, the contract stated that “[t]his agreement shall commence January 1, 1988 and end March 31, 1988.” There is no dispute that HWC fulfilled its obligations under the 1987 contract and trained 120 DFY staff, some of whom were master trainers, during the relevant three-month term. In 1997, however, after two incidents at DFY facilities in which children were harmed by the use of improper restraint techniques, DFY requested that HWC provide retraining to its staff.

The resulting contract (the “1997 contract”) provided that HWC would “update and recertify existing [DFY] Crisis Management/Physical Restraint trainers in the techniques encompassed in the *Handle With Care* program;” that it would “deliver twelve (12)

days of training to approximately one hundred twenty (120) existing [DFY] trainers;" and that DFY had "the right to reproduce all training materials." The contract provided that the "agreement shall commence May 1, 1997 and end August 31, 1997." Additionally, HWC required DFY staff members to sign individual contracts acknowledging that their certification to train in HWC's methods terminated after one year.

HWC furnished the training and materials in conformity with the 1997 contract. Thereafter, there is no dispute that DFY master trainers, using HWC's materials, trained the rest of DFY's staff in the HWC method. A year later, DFY merged into OCFS and the latter continued to use HWC's materials to train its staff.

HWC faced competition in the restraint method and training business. Cornell, in partnership with the State of New York, developed and marketed its own restraint method and training services called Therapeutic Crisis Intervention ("TCI"). HWC and TCI competed in providing restraint training services to various agencies, organizations, and businesses.

Sometime after DFY merged with OCFS in 1998, OCFS began to withhold its approval of each facility's restraint method unless the TCI method was used. After learning of the alleged policy change at OCFS, HWC filed the instant action challenging the policy, claiming that OCFS, Cornell, and HCC conspired to monopolize the market for restraint services in violation of the antitrust laws. HWC also claimed that OCFS infringed HWC's copyright by reproducing HWC's materials in 1998 and by continuing to use them and made various state law claims. After the district court dismissed these claims, HWC appealed.

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<sup>1</sup> We note that, as defendants acknowledge on appeal, the district court was mistaken in its view that the contract was "drafted by Chapman."

## DISCUSSION

### I. Legal Standard

We review *de novo* the dismissal of a complaint for failure to state a claim, and accept all well-pleaded facts as true and consider those facts in the light most favorable to the plaintiff. *Patane v. Clark*, 508 F.3d 106, 111 (2d Cir. 2007) (per curiam).

To survive dismissal, the plaintiff must provide the grounds upon which his claim rests through factual allegations sufficient 'to raise a right to relief above the speculative level.' Once a claim has been adequately stated, it may be supported by showing any set of facts consistent with the allegations in the complaint.

*ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007)).

### II. The Copyright Claim

HWC's copyright claim against the state defendants is dependent upon the terms of the 1997 contract. There is no dispute that DFY copied HWC's materials; the only question is whether DFY had the right to do so. *See Graham v. James*, 144 F.3d 229, 236 (2d Cir. 1998) ("A copyright owner who grants a nonexclusive license to use his copyrighted material waives his right to sue the licensee for copyright infringement."). "In interpreting a contract, the intent of the parties governs. A contract should be construed so as to give full meaning and effect to all of its provisions." *Am. Express Bank Ltd. v. Uniroyal, Inc.*, 562 N.Y.S.2d 613, 614 (N.Y. App. Div. 1990) (citations omitted). The question of whether a provision in an agreement is ambiguous is a question of law. *Collins v. Harrison-Bode*, 303 F.3d 429, 433 (2d Cir. 2002). Under New York law, the presence or absence of ambiguity is determined by looking within the four corners of the document, without reference to extrinsic evidence. *Kass v. Kass*, 696 N.E.2d 174, 180

(N.Y. 1998). “[A]n ambiguity exists where a contract term could suggest more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.” *World Trade Ctr. Props., L.L.C. v. Hartford Fire Ins. Co.*, 345 F.3d 154, 184 (2d Cir. 2003) (internal quotation marks and citation omitted).

We must decide whether the 1997 contract is ambiguous as to the duration of the license granted to copy HWC’s materials. Although both parties contend that the 1997 agreement is unambiguous on its face, they draw different conclusions as to the duration of the license. HWC claims that, according to the 1997 contract’s “Term of Agreement” provision, DFY’s right to copy its materials ended on August 31, 1997 (120 days after the agreement commenced). The state defendants, however, contend that the 1997 contract unambiguously grants DFY a perpetual right to copy HWC’s materials. The district court agreed with the state defendants. We disagree and conclude that the contract on its face is ambiguous.

The purpose of the 1997 contract is not disputed: HWC agreed to “update and recertify existing [DFY] Crisis Management/Physical Restraint trainers in the techniques encompassed in the *Handle With Care* program.” To that end, the agreement provided that HWC would perform twelve days of training to DFY trainers. The DFY trainers would then train the rest of DFY’s staff in HWC’s methods. Contemplating that the DFY trainers would need to utilize HWC’s materials in training the rest of the Division staff, the 1997 contract acknowledged that “[DFY] has the right to reproduce all training materials.”

HWC’s argument that the license to copy its materials expired after 120 days conflicts with the agreement’s purpose. While the 1997 contract states that the “agreement shall commence May 1, 1997 and end August 31, 1997,” there is nothing in the contract that expressly indicates that this provision governs the duration of



the license to copy HWC's materials. Indeed, from the four corners of the agreement, it is not at all certain that the parties intended that DFY's rights to copy HWC's materials terminate so quickly. HWC plainly knew that it was training trainers who, if they were to train the rest of DFY's staff, would need to copy HWC's materials. The provision allowing use of HWC's materials is unclear on its face as to whether it was meant to end with the agreement, or whether it was meant to continue for a reasonable period of time after the agreement ended to allow for further training of DFY staff.

We are equally unpersuaded that the 1997 contract granted a perpetual license. There is no indication from the contract that the license to copy HWC's materials was meant to be perpetual. And under New York law, "[c]ontracts which are vague as to their duration generally will not be construed to provide for perpetual performance." *Ketcham v. Hall Syndicate, Inc.*, 236 N.Y.S.2d 206, 214 (N.Y. Sup. Ct. 1962). In the absence of a clear provision, courts are reluctant to declare a perpetual license as a matter of law. See *Warner-Lambert Pharm. Co. v. John J. Reynolds, Inc.*, 178 F. Supp. 655, 661 (S.D.N.Y. 1959), *aff'd*, 280 F.2d 197 (2d Cir. 1960) (per curiam). Because the contract here does not explicitly grant a perpetual license, we do not find that it did so.

After rejecting both parties' arguments and finding no plausible alternative within the four corners of the document, we conclude that the 1997 contract is ambiguous as to the duration of the license. This leaves us two choices. "We may resolve [the] ambiguity . . . if there is no extrinsic evidence to support one party's interpretation of the ambiguous language or if the extrinsic evidence is so one-sided that no reasonable factfinder could decide contrary to one party's interpretation. Or, we may remand for the trial court to consider and weigh extrinsic evidence to determine what the parties intended." *Collins*, 303 F.3d at 433 (internal quotation marks and citation omitted). We choose the latter.

The extrinsic evidence presently in the record does not answer the question. HWC points out that when it provided retraining in 1997, it required each Division trainer to sign a contract acknowl-

edging that his/her certification expired after one year. This evidence would support a finding that the license granted under the 1997 contract was of a more limited duration. The evidentiary record, however, is incomplete. Because further fact-finding is necessary, we remand the copyright claim to the district court for further proceedings consistent with this opinion.<sup>2</sup>

### III. Plaintiffs Have Failed to Define the Proper Market for Antitrust Purposes

HWC claims that OCFS, in cooperation with Cornell, has conspired to create a monopoly in the market for “training services to private child care providers located within the State of New York” by withholding approval of supervised facilities that do not use the TCI method. HWC alleges that HCC was complicit in this arrangement because, after HWC trained HCC’s staff in 2001, HWC discovered that one of HCC’s training coordinators “appeared in TCI’s training manual and video illustrating” HWC’s proprietary methods.

For a monopoly claim “[t]o survive a Rule 12(b)(6) motion to dismiss, an alleged product market must bear a rational relation to the methodology courts prescribe to define a market for antitrust purposes — analysis of the interchangeability of use or the cross-elasticity of demand, and it must be plausible.” *Todd v. Exxon Corp.*, 275 F.3d 191, 200 (2d Cir. 2001) (internal quotation marks and citation omitted). “[T]he reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it” determine “[t]he outer boundaries of a product market.” *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962). Though “market definition is a deeply fact-intensive inquiry [and] courts [therefore] hesitate to grant motions to dismiss

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<sup>2</sup> Because the district court did not have occasion to reach the state defendants’ Eleventh Amendment immunity defenses, and because the Eleventh Amendment would not, in any event, bar suit against OCFS officials and employees sued in their official capacity for injunctive relief, *Henrietta D. v. Bloomberg*, 331 F.3d 261, 287 (2d Cir. 2003), we do not need to reach this issue.

for failure to plead a relevant product market,” *Todd*, 275 F.3d at 199-200, “[w]here the plaintiff fails to define its proposed relevant market with reference to the rule of reasonable interchangeability and cross-elasticity of demand, or alleges a proposed relevant market that clearly does not encompass all interchangeable substitute products even when all factual inferences are granted in plaintiff’s favor, the relevant market is legally insufficient and a motion to dismiss may be granted,” *Queen City Pizza, Inc. v. Domino’s Pizza, Inc.*, 124 F.3d 430, 436 (3d Cir. 1997). Here we find that plaintiffs’ proposed relevant market does not encompass all interchangeable substitute products. We therefore affirm the district court’s dismissal of the antitrust claims.

HWC contends that the relevant market for our analysis here is the market for “restraint training services to private child care providers located within the State of New York.” This definition is too narrow. HWC has failed to show how the market for restraint training services to *child care providers* is any different from the larger market for restraint training services to other businesses, agencies, and organizations. “Interchangeability implies that one product is roughly equivalent to another for the use to which it is put. . . .” *Queen City*, 124 F.3d at 437 (internal quotation marks and citation omitted). Plaintiffs do not contest that Handle With Care is marketed to and utilized by various organizations, institutions, and agencies that are not child care providers. Indeed, plaintiffs readily admit in their complaint that they compete for such contracts on a “national and international” basis. The unifying characteristic of this market is that each purchaser needs to restrain individuals, not just children.

Because “the reasonable interchangeability of use . . . between the product itself and substitutes for it” determines “[t]he outer boundaries of a product market,” it is apparent that the proper market here is the larger market for restraint training services to businesses, agencies, and organizations with the need to safely restrain individuals of all ages, not the more limited market for child restraint services. *Brown Shoe*, 370 U.S. at 325. As the district

court noted, the larger market includes social service agencies, law enforcement agencies, correctional facilities, educational facilities, and even airlines.

Furthermore, we reject HWC's argument that because private child care providers in New York must have OCFS approval in order to operate, and thus that the market is specialized, it stated a plausible discrete relevant market. The relevant inquiry is not whether a private child care provider may reasonably use both approved and non-approved OCFS methods interchangeably, but whether private child care providers in general might use such products interchangeably. *See Queen City*, 124 F.3d at 438. HWC's proposed relevant market "clearly does not encompass all interchangeable substitute products even when all factual inferences are granted in plaintiff's favor." *Id.* at 436. We thus agree with the district court that the "Plaintiffs have not offered any theoretically reasonable explanation for restricting the product market to child care providers that require OCFS approval, or provided a sufficient factual predicate to support an inference that OCFS enjoys any substantial market power in the broader market for restraint services." Plaintiffs' proposed market is therefore legally insufficient and dismissal of the antitrust claims was appropriate.<sup>3</sup>

## CONCLUSION

For the foregoing reasons, the judgment below is AFFIRMED as to the antitrust claims and VACATED as to the copyright claim and the case is REMANDED to the district court for further proceedings consistent with this opinion.

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<sup>3</sup> HWC argues that the district court exceeded its allowable discretion in dismissing their antitrust claims with prejudice, as opposed to allowing HWC to amend their complaint. Given the nature of the claims, repleading would be futile; HWC offers no plausible argument as to how the failure to plead a relevant market could be rectified through an amended complaint. *See Patane v. Clark*, 508 F.3d 106, 113 n.6 (2d Cir. 2007) (per curiam).

**ANTI-VIRUS CERTIFICATION FORM**

See Second Circuit Interim Local Rule 25(a)6.

CASE NAME: Chapman v. New York State Division For Youth

DOCKET NUMBER: 05-7010-cv

I, (please print your name) Charles J. Esposito, certify that

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<criminalcases@ca2.uscourts.gov>.

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and that no viruses were detected.

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If you know, please print the version of revision and/or the anti-virus signature files \_\_\_\_\_  
DAT version 5453.000, Dated December 4, 2008

(Your Signature) 

Date: 12/04/2008

## AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK  
COUNTY OF NEW YORK, ss.:

EDWIN RIOS, being duly sworn, deposes and says that he is over the age of 18 years, is not a party to this action, and resides at 2828 West 15th Street, Brooklyn, New York 11224.

That on December 4, 2008, he served 2 copies of Petition for Panel Rehearing Petition for Rehearing *En Banc* (Chapman, et al. v. New York State Division for Youth, et al.) on:

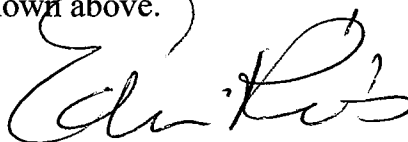
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Deputy Solicitor General  
Attorney General's Office, State of New York  
The Capitol  
Albany, NY 12224  
[andrea.oser.@oag.state.ny.us](mailto:andrea.oser.@oag.state.ny.us)

David Walsh, IV, Esq.  
Petroni & Petroni  
1624 Genesee Street  
Utica, NY 13502  
[d.walsh@petroneandpetrone.com](mailto:d.walsh@petroneandpetrone.com)

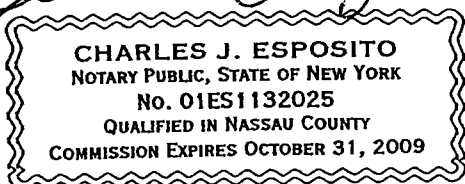
Nelson E. Roth, Esq.  
Office of the University Counsel  
300 CCC Building/Garden Avenue  
Ithaca, NY 14853  
[ner@cornell.edu](mailto:ner@cornell.edu)

by depositing the same, properly enclosed in a securely-sealed, post-paid wrapper, in a mail depository regularly maintained by the United States Postal Service in the Borough of Manhattan, City of New York, addressed as shown above.

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December 4, 2008

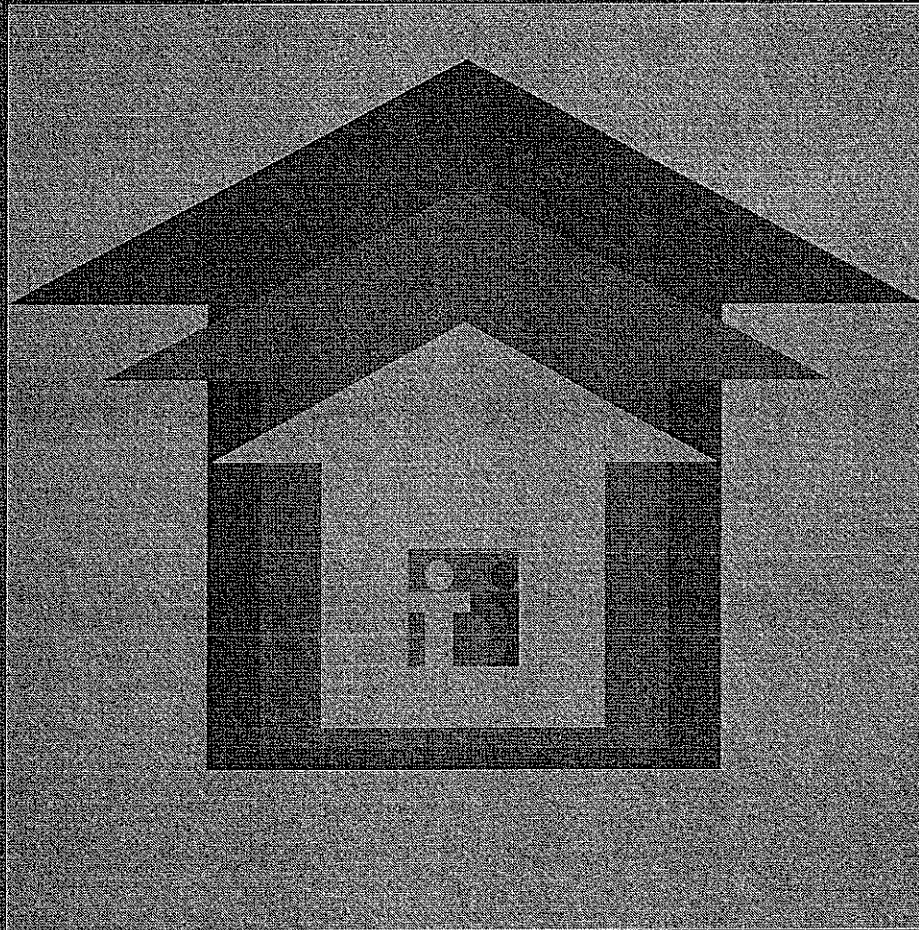


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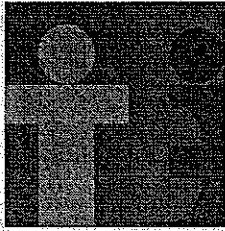
# **EXHIBIT A - PART 1**

**(Brochure pp. 1 - 12)**



Bringing the TCI System  
To Your Organization





RESIDENTIAL  
CHILD CARE PROJECT  
Cornell University, College  
of Human Ecology, Family  
Life Development Center,  
Beebe Hall, Ithaca, New  
York USA 14853-4401  
Tel: 607 254 5210  
Fax: 607 255 4837  
<http://rccp.cornell.edu>

Dear Colleague,

As requested, I am sending you information on how to bring our Therapeutic Crisis Intervention (TCI) Program to your organization. Our goal is to disseminate model techniques in the prevention of institutional child abuse and neglect by preventing and de-escalating aggressive behavior in residential child care facilities. Residential child caring agencies have been able to reduce the need for physical restraint by effectively implementing our Therapeutic Crisis Intervention system. Implementation of TCI has resulted in an increased ability on the part of staff to manage and prevent crises. Implementation studies have also shown an increased knowledge and skill on the part of all staff to handle crisis episodes effectively and a change in attitude regarding the use of physical restraint.

If TCI is to be an effective crisis management system for your organization, you need to address five general criteria: leadership and administrative support, clinical oversight, supervision, training, and critical incident monitoring. There is a description of these criteria on page 4 of this brochure to help you decide whether TCI is right for your organization. Information about how we can help you implement the TCI System is on page 3.

Many larger organizations request onsite training of trainers in order to train large numbers of trainers in a cost effective manner. Please see page 7 for information about sponsoring an onsite training of trainers.

The TCI certification program is designed to develop, maintain, and strengthen the standards of performance for individuals who have successfully completed the requirements of the TCI training of trainers. This process affirms our commitment to ensure that TCI is implemented in child caring agencies in a manner that meets the developmental needs of children, and the safety of both children and staff. Please note that all participants must pass the certification requirements during the training in order to train TCI. Attendance alone does not qualify them to be TCI trainers. Complete information about the certification process may be found on page 11.

This brochure includes detailed information about the TCI programs we offer onsite. If you need any other additional information, please contact us.

Sincerely,

Martha Holden  
Senior Extension Associate  
Project Director  
Residential Child Care Project

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## TCI Programs Offered Onsite

The Residential Child Care Project is prepared to bring the following programs to your organization:

### SYSTEM WIDE

#### Comprehensive TCI Implementation Package

This is the most comprehensive program the RCCP offers. It includes assessment, technical assistance, and training, that takes place over an 18 month period. Staff from the RCCP work with the residential facility to implement the TCI model of crisis prevention and management. Please contact the RCCP for pricing information for this package.

### TRAINING

#### TCI Training of Trainers Program

This program includes an initial assessment and planning meeting and a five-day training of trainers program. The number of training participants is limited to 18. The cost of this program is \$17,500 US; £15,000 UK; and €20,000 Ireland.

#### TCI Training of Trainers: TCI Without Physical Interventions

This program includes an initial assessment and planning meeting and a four day training of trainers program. The number of training participants is limited to 18. The cost of this program is \$15,000 US; £13,000 UK; and €16,000 Ireland.

#### TCI for Family Care Providers Training of Trainers Program

This program includes an initial assessment and planning meeting and a five day training of trainers program. The number of training participants is limited to 18. The cost of this program is \$17,500 US; £15,000 UK; and €20,000 Ireland.

#### TCI Updates

Two day training programs are offered for those who have completed any of the above train the trainer programs. The number of training participants is limited to 20. The cost of two day updates is \$6,600 US; £5,000 UK; and €7,500 Ireland.

In 2006, the RCCP is offering one day updates in the UK and Ireland for TCI trainers who have successfully completed both the *Designing Refresher Training Update* and the *Post Crisis Response Update*. The number of training participants is limited to 20. The cost of these one day updates is £2,750 UK; and €4,000 Ireland. These one day updates will be offered in North America in 2007.

Note that TCI trainers are required to attend and successfully complete a TCI update every two years in North America, Bermuda, and Australia, and every year in OCFS agencies in New York State and in the United Kingdom and Ireland to maintain their certification status. (For more information about certification, please go to page 11).

## Preplanning Considerations

If TCI is to be an effective crisis management system for you and your organization, you need to address five general criteria: leadership and administrative support, clinical oversight, supervision, training, and critical incident monitoring.

### Leadership and Administrative Support

The level of effectiveness of our system to help organizations reduce the need for high risk interventions and prevent and reduce potentially dangerous situations depends on leadership's commitment to its implementation. TCI should be consistent with the organization's mission and philosophy. The leadership should be fully informed about the TCI crisis management system, understanding its foundation and supporting the necessary components that are integral to its implementation and maintenance. There should be clear policies, procedures, and guidelines written and communicated to all staff. Every staff member should know what to do when confronted with potential crisis situations, and how to prevent, de-escalate and contain a child's aggressive and acting out behavior.

Leadership must provide adequate resources, including adequate and qualified staff, support for regular external and internal monitoring, and clear rules and procedures that have safeguards against abusive practices. Leadership should promote an organizational culture that values developmentally appropriate and therapeutic practice above control and expediency.

### Clinical Oversight

Clinical services play an important role in overseeing and monitoring clients' responses to crisis situations. Developing and implementing an individual crisis management plan is critical to responding appropriately and therapeutically to a child in crisis. Each child should have a functional analysis of his or her crisis behavior with a plan that will eliminate the need for external controls by helping the child develop replacement behaviors and more appropriate coping skills. The plan should also include a strategy for intervening that includes specific

physical interventions, if appropriate, or alternative strategies if physical intervention is not an option.

This involves screening the child for any pre-existing medical and psychological conditions that would be exacerbated if the child were involved in a physical restraint. Medications the child may be taking which would effect the respiratory system should be noted. If there is a history of physical or sexual abuse, this should be considered as it could contribute to the child experiencing emotional trauma during a physical restraint. There should be ongoing reviews of the child's progress toward goals and eliminating the need for external controls.

### Supervision

Frequent and ongoing supportive supervision should be built into the implementation and ongoing monitoring of the TCI crisis management system. Supervisors should be fully trained in all of the prevention, de-escalation, and intervention techniques so that they can provide effective supervision, coaching, and monitoring. Supervisors should have reasonable expectations with realistic time frames and schedules for staff so that they can accomplish tasks and respond to children's needs in a thoughtful and planful manner.

A post-crisis multilevel response should be built into the practice. Children and staff should receive immediate support and a process debriefing following a crisis. Families should be notified when their child has been involved in a physical intervention. Discussing crisis incidents should be built into team/unit meetings so that everyone can learn from these situations.

### Training

TCI should be one part of a comprehensive staff development program that provides basic training as well as specialized training based on the population served. TCI training is only to be conducted by a certified TCI trainer who has completed a Cornell-sponsored training of trainers program. The course should be four to five days in length with a minimum of 24 hours of instruction. The *Trainer's*

## Preplanning Considerations

*Activity Guide* must be followed with competency testing conducted at the end of the course. If the training is less than 24 hours, the physical restraint techniques should not be taught. Refreshers should be conducted with all direct care staff at least semiannually, with annual testing and recertification. TCI trainers are required to attend a Cornell University sponsored update and pass the testing requirements at least every two years in order to maintain their certified training status. In some locations updates must be completed annually.

### **Documentation and Critical Incident Monitoring**

Documentation is critical, and includes the documentation of staff supervision and training and the documentation and monitoring of critical incidents. As part of an agency's leadership and administrative support for TCI, an agency-wide committee should have the authority and responsibility to enforce documentation requirements and track the frequency, location, and type of critical incidents that occur. In addition, any committee or data management system should have the potential to effectively monitor staff, child, and programmatic involvement in critical incidents. This documentation and monitoring system allows the organization to review incidents and make decisions about individual and organizational practice.

In addition to an agency-wide critical incident review committee, there should be a peer review (clinical review) of critical incidents and a team or unit review. These reviews would focus on different aspects of the critical incident and feed back any information or suggestions to the team, clinician, or administration. There should be some type of benchmarking process and red flagging that is put in place that will note any situation that exceeds the norm and requires a special review. For example, a red flag might appear after a certain number of incidents during a month, or restraints that exceed a certain length or time.

## Comprehensive TCI Assessment and Implementation Package

The Residential Child Care Project has developed a comprehensive implementation package for residential child care agencies. An organization can expect an increased ability to prevent and manage crisis situations, including fewer physical restraint episodes, fewer injuries to children and staff, increased knowledge and skill levels on the part of all staff to handle crisis episodes effectively, and an overall change in the organizational culture.

Over an 18 month period, staff from Cornell University's Residential Child Care Project will work closely with the residential agency to implement the TCI model of crisis prevention and management. This includes:

- an assessment of the current crisis prevention and management system
- a plan to implement TCI tailored for the organization
- onsite training of trainers program
- onsite technical assistance to implement the comprehensive TCI system

### Assessment Phase

RCCP staff will meet with agency staff to administer surveys and to conduct interviews (all surveys and interviews are confidential and anonymous); observe child-staff interaction; and review agency policies, procedures, and critical incident reports. The assessment process focuses on the five critical organizational domains: leadership, supervision, clinical oversight, training, and critical incident monitoring. At the end of the phase, RCCP staff will conduct an assessment and planning meeting with key agency staff.

### Training Phase

Selected agency personnel will attend a "Training of Trainers in TCI" program. Using a train the trainer approach, RCCP staff will instruct selected supervisory and training staff to deliver TCI in-service training to all levels of residential child care staff. The selection of candidates for our TCI train the trainer program is critical to the success of TCI in

your agency. Given the nature of their responsibility to play a key role in implementation, the training participants should have "hands on" experience in dealing with children in crisis. If they are effective role models for new and experienced care workers they can instill positive and supportive values to child care staff and can coach and give corrective feedback to staff more effectively. The participant should be committed to conducting ongoing training for your staff for a period of two years. It will be helpful to have training responsibilities written into the job description.

### Technical Assistance Phase

An agency implementation team will meet with RCCP staff throughout the project to help facilitate the process and to tailor the model to meet the organization's specific needs. Technical assistance and training will be ongoing and available throughout the life of the project.

### Special Features

- Organizational capacity to maintain the TCI system
- Onsite training and technical assistance
- Selected agency staff trained as trainers in TCI
- Training materials to conduct 30 hours of in-service training

For further discussion of this project please contact Martha Holden at 607 254 5337

## Sponsoring Onsite Training

The process for bringing the TCI training of trainers to your agency is as follows:

1. In North America, you will work with Eugene Saville, RCCP Project Assistant, to determine a mutually convenient week during which this program could be offered. (Please see Timeline for Sponsoring a TCI Onsite Training on page 8). In the United Kingdom and Ireland, you will work with local RCCP representatives. \*
2. At a date decided by you and a RCCP staff member, an assessment and planning meeting will be scheduled for your organization to prepare for implementing TCI.
3. The completed applications (page 10) of all training candidates must be received by the RCCP 30 days prior to the training. If the applications are not sent to us by the designated date, the training will be cancelled. Upon receipt of the applications, the RCCP will send information and assignments to the candidates to be completed before the training. Substitutions may be made up to two weeks prior to the training. Substitutes must receive materials mailed prior to training from the person they are replacing.
4. If you wish to open the training to other agencies, please let us know. We must have prior review of any materials that will be sent out to other organizations promoting the training. We also require that the tuition fee remain at \$1,150./£950./€1,500. per participant in the five day TCI training of trainers program, and \$450./£375./€600. per participant in the TCI update trainings.
5. At the completion of the training, your agency will be billed for the cost of the program:
 

TCI Training of Trainers	\$17,500./£15,000./€20,000.
TCIF Training of Trainers	\$17,500./£15,000./€20,000.
TCI Training of Trainers: TCI Without Physical Interventions	\$15,000./£13,000./€16,000.
TCI Updates (2 Day)	\$6,600./£5,000./€7,500.
TCI Updates (1 Day UK + Ireland only)	£2,750./€4,000.
6. The RCCP will provide two TCI instructors and all of the training materials. Your agency is responsible for the training site; a room of at least 1500 square feet (140 square meters), a VCR and monitor, an overhead or PowerPoint projector and screen, a flip chart stand and flip chart, tables and chairs set up in a "U" shape, and morning and afternoon refreshment breaks. Please call if you have any questions or concerns regarding these procedures, 607.254.5210.

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\* In the United Kingdom, contact: Nick Pidgeon 01786832566  
 In Ireland, contact: Johnnie Gibson 02891888303

## Timeline for Sponsoring an Onsite Training

### Before Training Occurs

16-20 weeks

The sponsoring agency and the RCCP set a training date; the agency contact person is established.

12-16 weeks

The agency contact person works with Eugene Saville, RCCP Project Assistant or local representative, to secure an appropriate training site and lodging for TCI instructors. The agency distributes information and applications for training. *(Any materials to be distributed that are not Cornell University originated must be reviewed by the RCCP before distribution)*

6 weeks

Training site details are confirmed with the RCCP

4 weeks

The agency sends completed candidate applications to the RCCP. Training will be cancelled if applications are not received 30 days prior to training. The RCCP sends confirmation letters and reading assignments to candidates. If there are substitutions, the substitute candidates must receive the information two weeks prior to training from the person they are replacing. Travel arrangements are confirmed.

1 week

RCCP finalizes details with agency. Materials are sent to the site.

### One Month Before or After Training Occurs

**Assessment and Planning Day:** This meeting, held from 9:00 am to 4:00 pm, involves assessing the current crisis management system according to TCI criteria and developing a plan to fully implement TCI. RCCP staff will meet with key staff members of your organization to present TCI implementation criteria, facilitate your staff in assessing your present system of crisis management, and help develop a plan specifically tailored for your agency to successfully implement TCI. There is no maximum number of participants in the assessment and planning meeting. The members of the group should have the authority to carry out the implementation plan. This work group should be carefully selected to represent various expertise, disciplines, and programs.



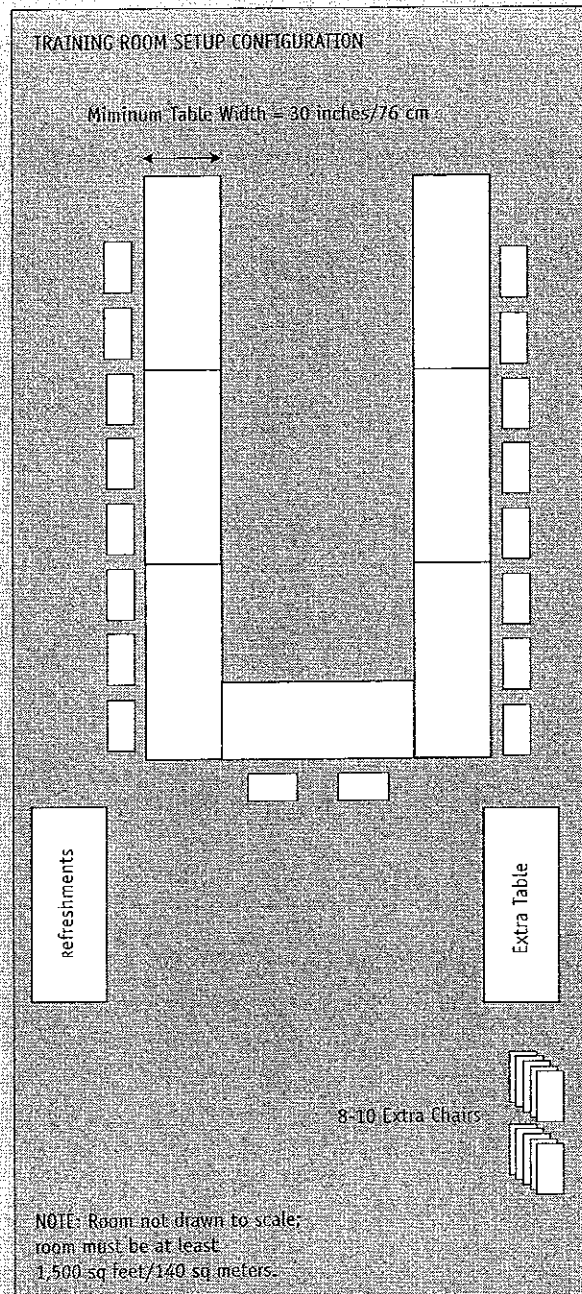
## Responsibilities of the Sponsoring Organization

### Training Room Requirements

1. The training room must be available as follows  
**For TCI Train the Trainer Programs:**  
 8:00 am until 6:00 pm Monday - Thursday  
 8:00 am until 4:00 pm Friday  
**For TCI Updates:**  
 8:00 am until 6:00 pm both days
2. The training room must be at least 1500 sq. feet (140 sq meters) with no obstacles, i.e., columns.
3. Set up should be a "U-shaped" arrangement of standard size banquet tables at least 30 inches (76 cm) wide. Place 18 chairs on the outside of the "U," and 8-10 extra chairs in the room.
4. There should be an extra table to the side for organizing training materials.
5. Coffee, tea, fruit, and/or pastry, e.g., Danish, muffins, bagels, should be set up first thing in the morning and available to participants at their leisure. Drinks should be replenished at 10:30 am.
6. Soft drinks should be set up between 2:30 pm and 3:00 pm.
7. There must be one flip chart stand with flip chart paper and markers.
8. There must be an overhead or PowerPoint projector and screen.
9. There must be a VCR/TV monitor.

### Registering Training Participants

The agency is responsible for registering training candidates. RCCP provides an application form for this purpose (see page 10). All completed applications must be received by the RCCP 30 days prior to the training. If the applications are not received by this date, the training will be cancelled. Upon receipt of the applications, the RCCP will send information and assignments to the candidates to be completed before the training. Substitutions may be made up to two weeks prior to the training.



## Training of Trainers in Therapeutic Crisis Intervention (TxT) Application

Please print or type.

*Candidate's Name*

*Position*

*Organization*

*Address*

*City*

*State/Province/County*

*Zip/Postal Code*

*Telephone*

*Fax*

*E-mail address (mandatory)*

*Training date and location*

*Supervisor's or Director's Name and Address*

I attest that I am physically capable of sustained, intense exertion and have no physical disability or condition (i.e., recent surgery, back or knee problems, heart condition, obesity, pregnancy) that would prevent me from participating in the restraint techniques and exercises (i.e., dropping repeatedly to knees, supporting another adult's weight) required in the Train the Trainer in Therapeutic Crisis Intervention program. I understand that these activities are strenuous and I am responsible for any accident that may occur during my participation. ***(Applies to TCI with physical training.)***

I understand that in order to be certified as TCI trainer and to be permitted to offer TCI training, I must pass the certification requirements during the Training of Trainer week. Attendance alone does not qualify me to become a TCI trainer and train TCI ***(Applies to all training.)***

*Participant's Signature*

*Date*

## Training of Trainers in Therapeutic Crisis Intervention: Update Application

Please print or type.

*Candidate's Name*

*Position*

*Organization*

*Address*

*City*

*State/Province/County*

*Zip/Postal Code*

*Telephone*

*Fax*

*E-mail address (mandatory)*

*Date on Your Training of Trainer's Certificate/TCI Trainer Identification Number*

*Supervisor's or Director's Name and Address*

I attest that I am physically capable of sustained, intense exertion and have no physical disability or condition (i.e., recent surgery, back or knee problems, heart condition, obesity, pregnancy) that would prevent me from participating in the restraint techniques and exercises (i.e., dropping repeatedly to knees, supporting another adult's weight) required in the Train the Trainer in Therapeutic Crisis Intervention program. I understand that these activities are strenuous and I am responsible for any accident that may occur during my participation. ***(Applies to TCI with physical training.)***

I understand that in order to be certified as TCI trainer and to be permitted to offer TCI training, I must pass the certification requirements during the Training of Trainer week. Attendance alone does not qualify me to become a TCI trainer and train TCI. ***(Applies to all training.)***

*Participant's Signature*

*Date*

## Certification of Trainers

The certification program is designed to develop, maintain, and strengthen the standards of performance for individuals who have successfully completed the requirements of the TCI training of trainers. This process affirms our commitment to ensure that TCI is implemented in a manner that meets the developmental needs of children, and the safety of both children and staff. Certification includes an agreement to practice in accordance with TCI principles. This agreement provides a framework for TCI practice and training and general standards that include levels of certification, regulations, and requirements for continuing or maintaining the certification process.

### ASSOCIATE CERTIFICATION

Certification represents a high standard of professional practice. An associate certification is granted at the completion of training if the participant successfully completes the training and evaluation requirements. To maintain associate level certification, certified trainers must attend a Cornell sponsored TCI update every two years in North America; every year in New York State, the United Kingdom, and Ireland.

#### Basic Qualifications: Associate Certification

1. Successful completion of the training of trainers program. Successful completion is defined as complete attendance, a passing score on a written test and on skill demonstrations in key competency areas.
2. Participants agree to practice in accordance with TCI principles and follow the guidelines for training and implementing TCI.

#### Privileges: Associate Certification

1. Can provide direct training within their organization/agency.
2. Can apply for professional certification after a minimum of one year.

### PROFESSIONAL CERTIFICATION

The second level of certification is the professional level. After a minimum of one year as an associate TCI trainer, applicants have to perform at a professional level for the predetermined number of competencies, successfully complete the TCI update for professional certification, and submit a portfolio of their work. To maintain professional level certification, certified trainers must attend, and successfully complete, a Cornell sponsored TCI update every two years in North America; every year in New York State, the United Kingdom, and Ireland.

#### Basic Qualifications: Professional Certification

1. Meet or exceed all the requirements for Associate Certification.
2. Successfully complete the TCI update, Developing Professional Level TCI Skills.
3. Successfully complete a minimum of four direct care training programs of a minimum of 24 hours length with prescribed evaluation instruments within their associate certification period. Successful completion is defined by acceptable trainee performance on selected evaluation instruments.
4. Submit a portfolio with attendance sheets and test scores of direct training and selected video tape segments from direct training.

#### Privileges: Professional Certification

1. Can provide direct training within their organization/agency.
2. Can provide direct training outside of their organization/agency.
3. Is eligible to sit on a certification committee.
4. The employing organization can provide direct TCI training to staff outside of their agency.

# **EXHIBIT A - PART 2**

**(Brochure pp. 13 - 25)**

## TCI Training of Trainers Program

This program includes an initial assessment and planning meeting, the five day program, and materials described below.

### Program Description

A child in crisis needs help. What kind of help and how it is given makes a crucial difference between the child's learning from the experience or being set back. Training of Trainers in Therapeutic Crisis Intervention presents a crisis prevention and intervention model designed to help staff assist children to learn constructive ways to handle feelings of frustration, failure, anger, and hurt. In addition, physical intervention techniques that respect the dignity of the worker and the child are practiced. The program also gives participants the tools to teach therapeutic crisis intervention techniques in their own agencies. Participants are prepared to supervise practice sessions; use role playing, small group discussions; and handle resistance to training. There is an opportunity to practice and gain immediate training experience. The course stresses crisis prevention.

### Learning Outcomes

Participants will be able to:

- proactively prevent and/or deescalate a potential crisis situation with a child or young person
- manage a crisis situation therapeutically and, if necessary, to intervene physically in a manner that reduces the risk of harm to children and staff
- help children and young people improve their coping strategies
- deliver the TCI training in their agencies effectively

### Intended Audience

Trainers, managers, counselors, and care workers capable of training therapeutic crisis intervention techniques. Participants are required to be capable of moderate physical activity and pass written and competency based testing at the end of the course. If participants are going to participate in the physical component they must not have any of the following conditions: heart condition, pregnancy, recent surgery, obesity, joint problems, severe asthma, or respiratory condition.

### Program Outline

- Day 1 defines crisis as an opportunity for the child to learn new coping skills; explores the importance of self, child, and environment awareness; and examines intervention approaches and effective training techniques
- Day 2 builds communication skills and behavior management techniques; explores how self-awareness and self-talk can prevent crises and avoid crisis cycles, and practices protective stances and self protection techniques
- Day 3 teaches Life Space Interviewing and verbal strategies to de-escalate an aggressive young person, examines the elements of a potentially violent situation, and introduces techniques to break up fights and physically restrain a young person if there is a safety concern
- Day 4 continues Life Space Interviewing practice and physical intervention techniques practice, and discusses safety issues and signs of distress in the child or young person
- Day 5 discusses implementation and certification requirements and tests participants for certification requirements

### Materials

Participants receive a trainer's material containing a complete curriculum, two video tapes, student workbook, CD PowerPoint presentation, and testing materials to use in their direct training.

## TCI Training of Trainers Program

### Agenda

#### MONDAY

8:45 am

Introductions

#### CRISIS AS OPPORTUNITY

Stress Model of Crisis

Assessing the Situation

*Lunch*

#### CRISIS AS OPPORTUNITY (cont.)

Awareness of Self, Child, and Environment

Intervention Approaches

Training Tips

*Assignments for the week distributed to participants*

5:00 pm

*Session adjourned*

#### TUESDAY

8:45 am

#### TRIGGERING AND ESCALATION PHASES

Verbal Crisis Communication

Behavior Management Techniques

*Lunch*

#### TRIGGERING AND ESCALATION PHASES

(cont.)

Behavior Management Techniques

Anger and the Crisis Cycle

Nonverbal Crisis Communication

Self Protection Techniques

5:00 pm

*Session adjourned*

#### WEDNESDAY

8:45 am

#### ESCALATION, OUTBURST AND RECOVERY PHASES

1 ASSIST (Verbal Strategies to De-escalate

Aggressive Behavior)

Life Space Interviewing

*Lunch*

#### WEDNESDAY, (cont.)

#### ESCALATION, OUTBURST AND RECOVERY

#### PHASES (cont.)

Choosing a Safety Intervention

Breaking Up Fights

Standing Hold

Team Restraints

Small Child Restraint

Letting Go and Recovery

5:00

*Session adjourned*

#### THURSDAY

8:45 am

#### OUT BURST AND RECOVERY PHASES

Responding to Feelings Vs. Behavior

Life Space Interviewing

Practicing Physical Interventions

*Lunch*

#### OUT BURST AND RECOVERY PHASE (cont.)

Practicing Physical Interventions

Three Person Restraints and Transferring Control

Practicing With Resistance

5:00

*Session adjourned*

#### FRIDAY

8:45 am

#### IMPLEMENTATION AND TESTING

Signs of Distress and Safety Brief

Crisis Intervention Role Plays

Criteria For Implementing the TCI System

Testing

Physical Intervention Techniques

LSI

Written Test

Close of Program

## TCI Without Physical Interventions Training of Trainers

This program includes an initial assessment and planning meeting, the four day program, and materials described below.

### Program Description

A child in crisis needs help. What kind of help and how it is given makes a crucial difference between the child's learning from the experience or being set back. Therapeutic Crisis Intervention presents a crisis prevention and intervention model designed to assist children to learn constructive ways to handle feelings of frustration, failure, anger, and hurt. The program also gives participants the tools to teach therapeutic crisis intervention techniques in their own agencies. Participants are prepared to use role playing and small group discussions, and to handle resistance to training. There is an opportunity to practice and gain immediate training experience. The course stresses crisis prevention.

### Learning Outcomes

Participants will be able to:

- proactively prevent and/or deescalate a potential crisis situation with a child or young person
- manage a crisis situation therapeutically in a manner that reduces the risk of harm to children and staff
- help children and young people improve their coping strategies
- deliver the TCI training in their agencies effectively

### Intended Audience

Trainers, managers, counselors, and care workers capable of training therapeutic crisis intervention techniques. Participants are required to pass written and competency based testing at the end of the course.

### Program Outline

- Day 1 defines crisis as an opportunity for the child to learn new coping skills and explores the importance of self, child, and environment awareness
- Day 2 examines intervention approaches, builds communication skills and behavior management techniques, and teaches Life Space Interviewing
- Day 3 explores how self-awareness and self-talk can prevent crises and avoid the crisis cycle, teaches verbal strategies to de-escalate an aggressive young person, examines the elements of a potentially violent situation, and offers the opportunity to practice Life Space Interviews
- Day 4 discusses implementation and certification requirements and tests participants for certification requirements

### Materials

Participants receive a trainer's material containing a complete curriculum, one video tape, corresponding student workbook, CD PowerPoint presentation, and testing materials to use in their direct training.



# TCI Without Physical Interventions Training of Trainers

## Agenda

### DAY ONE

8:45 am

Introductions and Overview

Stress Model of Crisis

Assessing the Situation

*Lunch*

Awareness of Self, Young Person, and Environment

Training Tips

*Assignments for the week distributed to participants*

4:30 pm

*Session adjourned*

### DAY TWO

8:45 am

Intervention Approaches

Verbal Crisis Communication

*Lunch*

Behavior Management Techniques

Life Space Interviewing (LSI)

LSI Practice

4:30 pm

*Session adjourned*

### DAY THREE

8:45 am

Non-Verbal Behaviors

Anger and the Crisis Cycle

I ASSIST (Verbal Strategies to De-escalate

Aggressive Behavior)

*Lunch*

Responding to Feelings Rather Than Behavior

Practicing the LSI

Training Tips

4:30

*Session adjourned*

### DAY FOUR

8:45 am

Implementing The TCI System

Crisis Intervention Role Plays

Testing LSI

*Lunch*

Testing LSI, continued

Written Test

Close of Program

3:30 pm

*Session adjourned*

## TCI for Family Care Providers Training of Trainers

This program includes an initial assessment and planning meeting, the five day program, and materials described below.

### Program Description

Foster and adoptive parents often have children placed with them who exhibit destructive and aggressive behavior. One of the most critical skills for these family care providers is to teach children to manage their feelings of frustration, anger, and loss in more socially and developmentally appropriate ways. Therapeutic Crisis Intervention for Family Care Providers (TCIF) stresses crisis prevention and crisis de-escalation in ways that help children learn to avoid losing control. The five day train the trainer program gives trainers the tools to teach crisis prevention strategies and crisis intervention techniques to foster and adoptive parents. Trainers are prepared to coach learners during skill practice sessions, to use role playing, to facilitate small group discussions, and to handle resistance to training. There are opportunities to practice activities and to gain immediate training experience in the subject matter.

The Residential Child Care Project has a certification process for TCIF trainers. Please note that all participants must pass the certification requirements during the TCIF training in order to train TCIF. Attendance alone does not qualify a participant to be a TCIF trainer.

### Learning Outcomes

Participants will be able to:

- proactively prevent and/or deescalate a potential crisis situation with a child or young person
- manage a crisis situation therapeutically in a manner that reduces the risk of harm to children and staff
- help children and young people improve their coping strategies
- deliver the TCI training in their agencies effectively

### Intended Audience

Trainers, administrators, supervisors, foster and adoptive care workers, and providers interested in training crisis prevention and intervention techniques to family care providers.

### Program Outline

- Day 1 defines crisis as an opportunity for the child to learn new coping skills, explores how self-awareness and awareness of the child relate to crisis prevention, and discusses how to assess a crisis situation
- Day 2 examines how managing the environment, setting limits, and giving choices can prevent crises, and presents different ways to approach children in crisis
- Day 3 practices communication skills and how to avoid power struggles, and demonstrates intervention strategies to address children's misbehaviors
- Day 4 teaches behavior management techniques, Life Space Interviewing, and demonstrates the I ASSIST technique that is used to defuse a potentially violent/aggressive situation
- Day 5 examines the dynamics of a temper tantrum, explains how to modify the Life Space Interview for pre-school children, discusses implementation, and tests participants for certification

### Materials

All participants will receive a comprehensive trainer's manual (reference and activity guide), student workbook, a video tape, and a CD PowerPoint presentation.

# TCI for Family Care Providers Training of Trainers

## Agenda

### MONDAY

9:00 am

Introductions, Review of Agenda, Expectations

SESSION 1: STRESS MODEL OF CRISIS

*Lunch*

SESSION 2: SELF AWARENESS AND CHILD AWARENESS

*Assignments for the week distributed to participants*

5:00 pm

*Session adjourned*

### TUESDAY

9:00 am

SESSION 3: AWARENESS OF THE ENVIRONMENT AND LIMIT SETTING

*Lunch*

SESSION 4: INTERVENTION APPROACHES

5:00 pm *General session adjourned*

### WEDNESDAY

9:00 am

SESSION 5: COMMUNICATION SKILLS AND AVOIDING THE CRISIS CYCLE

*Lunch*

SESSION 6: MANAGING CHILDREN'S BEHAVIOR

5:00 pm

*Session adjourned*

### THURSDAY

9:00 am

SESSION 7: LIFE SPACE INTERVENTIONS

*Lunch*

SESSION 8: NONVERBAL SKILLS AND ASSIST

5:00 pm

*Session adjourned*

### FRIDAY

9:00 am

SESSION 9: TEMPER TANTRUMS AND PRESCHOOL LSI

*Lunch*

LSI test

Written Test

Close of Program

3:30 pm

*Session adjourned*

## TCI 2 Day Update: TCI For Family Care Providers

### Program Description

“Therapeutic Crisis Intervention for Family Care Providers” is based on the TCI curriculum, but has been revised for adults caring for children in family settings. Challenges that foster and adoptive parents face when managing difficult behaviors are highlighted. This curriculum stresses crisis prevention and crisis de-escalation in ways that help children learn to avoid losing control. Activities addressing developmental issues, temper tantrums, limit setting, and Driekur’s goals of misbehavior will be presented. Practice sessions focus on crisis prevention and intervention techniques designed for foster and adoptive parents.

### Learning Outcomes

Participants will:

- understand the specific challenges that family care providers experience when caring for children with challenging behavior
- analyze behavior based on goals children have
- select specific strategies to address misbehavior based on an analysis of the child’s the goal
- demonstrate effective use of behavior management techniques
- analyze the stages of a temper tantrum
- apply developmental theory to expectations of children’s behaviors
- demonstrate effective limit setting

### Program Outline

- Day 1 provides information on the challenges of managing difficult behaviors in family care settings. The first five modules of the curriculum “TCI for Family Care Providers” will be discussed with a focus on the Stress Model of Crisis, intervention approaches, the care team, foster parents as role models, developmental needs of children and young people, and understanding children’s behavior using Driekur’s model of the goals of misbehavior. Physical interventions will be practiced for certification testing.
- Day 2 continues with a discussion and practice session covering modules 6-9 of the curriculum. Life Space Interviewing with modifications for younger children will be introduced and practiced. Practice sessions will be conducted to examine how to intervene with behaviors driven by attention-seeking, power, revenge, and avoidance needs. The dynamics of the temper tantrum will be examined. All participants will be tested with written and competency based tests in order to be recertified.

### Materials

Participants will receive the curriculum, “TCI for Family Care Providers,” which includes a reference guide, an activity guide, student workbook, and a CD PowerPoint presentation.

### Agenda

#### DAY ONE

9:00 am Introductions, Expectations  
 Stress Model of Crisis  
 Self Awareness and Child Awareness  
*Lunch*  
 Awareness of the Environment  
 Intervention Approaches  
 Communication Skills  
 Physical Restraint Practice  
 5:00 pm *Session adjourned*

#### DAY TWO

9:00 am  
 Managing Children’s Behavior  
 Life Space Interventions  
 I Assist  
*Lunch*  
 Temper Tantrums and Preschool LSI  
 Physical Skills Test  
 Written Test  
 5:00 pm *Session adjourned*

## TCI 2 Day Update: Designing Refresher Training

### Program Description

This update is designed to assist certified TCI trainers in designing and implementing effective and agency specific TCI refresher training in order to enhance individual and organization performance. Factors that facilitate skill transfer and maintenance will be discussed. An effective format for representing TCI materials using the model of discussion, demonstration, and practice will be presented. Participants will be asked to present activities appropriate for refresher training during this update. In advance of the update, participants will be asked to bring critical incidents (identifying information deleted) for review and use during the practice activities. A heavy emphasis is placed on advancing participants' skill development in the areas of the early interventions strategies, I ASSIST, Life Space Interview, physical skills, and risk assessment.

### Program Objectives

Participants will:

- design refresher training to meet agency specific goals and objectives
- design questions that test recall and application of TCI skills and concepts
- deliver an activity that advances skills and provides for corrective feedback
- demonstrate effective training strategies that meet the objectives of refresher training
- practice physical restraint skills with moderate resistance

### Program Outline

- Day 1 examines the differences between primary training and refresher training and highlights factors that facilitate skill transfer and maintenance. Participants will present TCI activities designed for refresher training. The training model of "discussion, demonstration and practice" and how to use critical incident reports as a training tool will be presented and practiced. Activities focusing on verbal crisis communications skills, LSIs, interventions strategies, crisis cycles, and physical intervention skills will be presented. Participants will learn how to set up a session for staff members to practice restraints with measured resistance.
- Day 2 continues with participant presentations highlighting behavior management techniques, I ASSIST, safety interventions and safety concerns. All participants will be tested with written and competency based tests.

### Materials

Participants successfully completing the update receive reference material and an activity guide.

### Agenda

#### DAY ONE

9:00 am

Introduction and Expectations

Refresher Training and the Training Cycle

Conducting Refresher Activities

*Lunch*

Participant Assignments

Participant Presentations

Physical Restraint Practice and Resistance Practice

5:00 pm

*Session adjourned*

#### DAY TWO

9:00 am

Refocus

Participant Presentations

*Lunch*

Participant Presentations

Physical Skills Testing

Written Testing

5:00 pm

*Session adjourned*

## TCI 2 Day Update: Post-Crisis Response

### Program Description

Supervisors need tools and resources for working with staff to help them prevent and de-escalate crises and ensure that the outcome of a crisis is a positive one for the young person, the staff member, and the program. This update addresses the emotional needs staff may have when managing aggressive clients and how supervisors can support front line staff. Crisis events are difficult for staff members, young people, and the entire program. They disrupt the normal day-to-day functioning of the program. Effort has to be expended to get things back on track. The goal of Therapeutic Crisis Intervention is to restore the child, the staff, and the program to a state of functioning at a higher level than it was before the crisis began. The post-crisis multilevel response model helps everyone involved learn from the crisis. It is also essential for maintaining the TCI system within the organization.

### Learning Outcomes

Participants will:

- analyze the effect of a crisis on staff members and the organization
- demonstrate immediate debriefing strategies
- demonstrate the incident review process with the staff member(s)
- demonstrate the incident review process with the team
- use the Individual Crisis Management Plan (ICMP) in the debriefing process
- develop an implementation plan for the post-crisis multilevel response system

### Program Outline

- Day 1 provides an overview of the TCI System and focuses on the importance of the supervisor and the post-crisis multilevel response. Participants practice immediate debriefing of staff members and learn how to provide direct supervision to front line staff. Participants also practice all of the physical intervention techniques.
- Day 2 continues with a demonstration and practice session on conducting incident reviews with staff members, using critical incident reports and ICMPs, and facilitating a team/unit review. Participants have the opportunity to develop or refine an implementation plan for instituting the post-crisis multilevel response system in their own organizations. All participants are tested with written and competency based tests in order to be re-certified.

### Materials

Participants successfully completing the update receive a reference guide, activity guide, student workbook and CD PowerPoint presentation.

### Agenda

#### DAY ONE

9:00 am

Introduction and Expectations

The Role of Supervision in the TCI System

Stress Model of Crisis: Staff/Agency Perspective

*Lunch*

Direct Supervision

Immediate Response

Immediate Response Practice

5:00 pm

*Session adjourned*

#### DAY TWO

9:00 am

Refocus

The LSI and Documentation

Incident Review With Staff

*Lunch*

Incident Review Practice

Incident Review With the Team

Closing

5:00 pm

*Session adjourned*

## TCI 2 Day Update: TCI for Developmental Disabilities

### Program Description

This update provides materials to assist staff in adapting TCI skills for children and young people who have developmental disabilities such as autism, communication difficulties, and mental retardation. The material is designed to enhance the core TCI activities. Topics include: preventing aggression and violence, hierarchy of communication, setting conditions and triggers, adapting the LSI for young people with limited or no verbal communication skills

### Learning Outcomes

Participants will:

- identify and reduce environmental and personal setting conditions for challenging behavior
- develop individualized prevention plans
- demonstrate a shortened LSI
- apply a hierarchy of communication when intervening

### Program Outline

- Day 1 explores how to prevent aggression and violence, and how to apply the hierarchy of communication and behavior management strategies when intervening. Physical intervention techniques will be practiced for recertification testing.
- Day 2 focuses on using a shortened Life Space Interviewing technique and highlights the use of safety interventions. All participants will be tested with written and competency based tests for re-certification.

### Materials

Participants successfully completing the update receive a reference guide, activity guide, student workbook and CD PowerPoint presentation.

### Agenda

#### DAY ONE

9:00 am

Warm Up

Preventing Aggression and Violence

*Lunch*

Crisis Communication Skills

Behavior Management Strategies

Physical Restraint Practice

5:00 pm

*Session adjourned*

#### DAY TWO

9:00 am

The Life Space Interview

The Shortened LSI

*Lunch*

The Advocate's LSI

Choosing a Safety Intervention

Physical Intervention Testing

Written Test

5:00 pm

*Session adjourned*

## TCI 1 Day Update: Conflict Resolution

**NOTE: This 1 day update is ONLY available to TCI trainers in the United Kingdom and Ireland who have successfully completed both updates: *Designing Refresher Training* and *The Post Crisis Response*. This update will be offered in North America in 2007.**

### Program Description

Every conflict has at least two sides with differing viewpoints and each side usually thinks their viewpoint is correct. It is impossible (and undesirable) to eliminate conflict from our lives so instead interpersonal conflict can be viewed as an opportunity to work out individual differences without resorting to violent means. Direct care workers are in the unique position of modeling conflict resolution strategies and teaching children how to become effective conflict managers.

### Learning Outcomes

Participants will:

- identify their personal response to conflict
- describe the difference between compromise and collaborate
- demonstrate the steps in conflict resolution
- take the recertification test

### Program Outline

This one day program will provide participants with another alternative strategy to help young people work out interpersonal conflict without resorting to violence. Activities include a set of conflict resolution steps to practice and an opportunity for participants to examine their own personal response to conflict. Techniques include a self assessment survey, presentation, discussion, demonstration, role play, and practice. All participants will be tested with written and competency based tests in order to be re-certified.

### Materials

Participants successfully completing the update receive a reference material, an activity guide, corresponding student workbook, and a CD containing the overheads used during the training.

### Eligible Trainers

TCI associate and professional level trainers who have successfully completed the *Post Crisis Response* and *Designing Refresher Training Updates* are eligible to attend this one day update to apply for recertification.



## TCI 1 Day Update: Legal Concepts in the Use of Physical Restraint

**NOTE: This 1 day update is ONLY available to TCI trainers in the United Kingdom and Ireland who have successfully completed both updates: *Designing Refresher Training* and *The Post Crisis Response*. This update will be offered in North America in 2007.**

### Program Description

This update is an overview of the various legal concepts involved in using physical restraint. Such concepts will incorporate the practices and principles taught in TCI as they relate to best practices. Participants will be introduced to levels of oversight (professional conduct, agency policy, regulations, and laws) and the consequences for violating each level. An explanation of necessary components of negligence, and how each is related to a failure to conduct a proper physical restraint will be outlined. Participants will then be presented with a hypothetical situation in which a child was injured following an inappropriate, or at least questionable, incident of restraint. A mock civil trial will be conducted with the participants as the jury.

### Learning Outcomes

Participants will:

- describe the different levels of oversight
- identify the connection between concepts and principles in TCI and legal concerns
- explain the requirements regarding documentation and responding to critical incidents
- identify the importance of consistent and accurate training, supervision, and oversight
- take the recertification test

### Program Outline

The first part of the update will be an explanation of the various legal concepts involved in using physical restraint. Participants will then be presented with a hypothetical situation in which a child was injured following a least questionable incident of restraint. Participants will play the role of jurors, and will have an opportunity to question witnesses after the "lawyers" have done so. Participants will have "jury instructions" consisting of a synopsis of the relevant law, from which they will determine whether an individual or an agency has any liability for a child's injury, and, if so, to what extent. Techniques include presentation, discussion, case study, mock trial, and practice. All participants will be tested with written and competency based tests in order to be re-certified.

### Materials

Participants will receive an outline of the material presented in the day's program.

### Eligible Trainers

TCI associate and professional level trainers who have successfully completed the *Post Crisis Response* and *Designing Refresher Training Updates* are eligible to attend this one-day update to apply for recertification.

## TCI 1 Day Update: Adapting the Life Space Interview for Proactive Aggression

**NOTE: This 1 day update is ONLY available to TCI trainers in the United Kingdom and Ireland who have successfully completed both updates: *Designing Refresher Training* and the *Post Crisis Response*. This update will be offered in North America in 2007.**

### Program Description

The Life Space Interview (LSI) as taught in the TCI core curriculum is designed to intervene with children and young people who are overwhelmed with emotions and whose actions are emotion driven. By contrast, young people who display proactive aggression are acting on thought processes. Direct care staff need assessment skills to differentiate between proactive and reactive aggression and adjust the LSI accordingly. This update is designed to assist direct care staff to apply a modified LSI with youth who display proactive aggressive behavior.

### Learning Outcomes

Participants will:

- analyze how proactive aggressive youth distance themselves from their emotions
- analyze when and how to use the modified LSI for proactive aggressive youth
- demonstrate how intervention approaches shape this LSI
- demonstrate the modified LSI
- take the recertification test

### Program Outline

This one day program examines in detail the behavioral and verbal manifestations of reactive and proactive aggression and the mechanisms by which proactive youth distance themselves from their emotions. The importance in having a program that reflects developmentally appropriate and value based expectations of pro-social behavior that guide youth and staff behavior is emphasized. A breakdown of the knowledge, skills, and attitudes required to conduct a LSI with youth who display proactive aggression is presented. Techniques include presentation, discussion, demonstration, role play, and practice. All participants will be tested with written and competency based tests in order to be re-certified.

### Materials

Participants successfully completing the update receive a reference material, an activity guide, corresponding student workbook, and a CD containing the overheads used during the training.

### Eligible Trainers

TCI associate and professional level trainers who have successfully completed the *Post Crisis Response* and *Designing Refresher Training Updates* are eligible to attend this one-day update to apply for recertification.

# **EXHIBIT B**

**Final Report**  
**New York State Title IV-E Foster Care**  
**Eligibility Review**  
**April 1, 2002 - September 30, 2002**

**Introduction**

During the week of April 28, 2003, Administration for Children and Families' (ACF) staff from the Central and Regional Offices and State of New York staff conducted a primary eligibility review of New York's title IV-E foster care program in Rensselaer, New York.

The purpose of the title IV-E foster care eligibility review was (1) to determine if New York State was in compliance with the child and provider eligibility requirements as outlined in 45 CFR §1356.71 and Section 472 of the Social Security Act; and (2) to validate the basis of the State's financial claims to ensure that appropriate payments were made on behalf of eligible children and to eligible homes and institutions.

**Scope of the Review**

The New York State title IV-E foster care review encompassed a sample of all of the title IV-E foster care cases that received a foster care maintenance payment during the period of April 1, 2002 to September 30, 2002. A computerized statistical sample of 100 cases (80 cases plus 20 over sample cases) was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which was transmitted by the State agency to the ACF for the period under review. The child's case file was reviewed for the determination of title IV-E eligibility and the provider's file was reviewed to ensure that the foster home or child care institution in which the child was placed was licensed or approved for the period of the review.

The State provided payment and claiming information for all of the reviewed cases. This information required extensive analysis and compilation for use in identifying payment amounts associated with the review findings. Gaps in the payment or the claiming of payments were identified covering periods during which children remained in care for some of the reviewed cases. The State did not provide information that would permit an analysis of whether the payment amounts are in accordance with the applicable rates for the type(s) of service.

During this initial primary review, 80 cases were reviewed. Thirty-one cases were determined to be in error for either part or all of the review period for reasons that are identified in the Case Record Summary section of this report. Since the number of error cases exceeded eight, the ACF has determined New York State not to be in substantial compliance. Therefore, pursuant to 45 CFR §1356.71(i), you are required to develop a Program Improvement Plan (PIP). Once the State has satisfactorily completed the PIP, a secondary review of a sample of 150 foster cases will be conducted.

**VI. Ineligible Payment** – Title IV-E foster care maintenance assistance payments may only cover the costs of providing certain items encompassed within the definition of this term. [Statutory Citation: 475(4); Regulatory Citation: 1356 60(c)]

One (1) case was ineligible for FFP based upon documentation establishing that the service provided was therapeutic counseling. This item of cost constitutes the provision of social services and is not allowable as a title IV-E claim. The payment was classified in the State's automated system as "Type 63 – Additional Per Diem".

### **Areas of Strengths**

In this section we have identified the areas of strength. Under each heading we provide the statutory and regulatory basis, and the specific results from our review.

**Safety Requirements of Provider** - In all cases where the State opts out of the criminal records check requirement, the licensing file for that foster or adoptive family must contain documentation that verifies that safety considerations with respect to the caretaker(s) have been addressed. In addition, in order for a child care institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed. [Statutory Citation: 471(a)(20), 475(1); Regulatory Citation: 1356.30]

#### **Safety requirements for foster/adoptive family homes when state has opted out of criminal records check**

The review indicated that in all foster family home cases reviewed the file contained the required documentation verifying that the safety consideration had been addressed for foster care providers. Specifically, it was determined that the State-required criminal records check had been conducted for all foster home cases reviewed and any concerns reviewed.

#### **Safety requirements for staff/caretakers in child care institutions**

Concurrently, the review also indicated that in all institutional cases reviewed the file contained the required documentation verifying that the safety consideration had been addressed for staff/caretakers in child care institutions.

### **Disallowances**

The review included a sample of 80 cases. The sample was drawn from a universe of cases that received at least one title IV-E foster care maintenance payment during the 6-month AFCARS period of April 1, 2002 to September 30, 2002. Based upon the results of the review, the State of New York has been determined not to be in substantial compliance. Thirty-one cases were determined not to be eligible for funding under title IV-E foster care. Therefore, a disallowance in the amount of \$806,811 in Federal Financial Participation is assessed for the period of time that these cases were determined to be in error through the end of the period under review for foster care maintenance payments and administrative costs.

**Review Team Members and Coordinators**

Vicki Wright	Children's Bureau, Washington, D.C.
Junius Scott	ACF Region II
Carolyn Baker	ACF Region II
Evelyn Torres-Ortega	ACF Region II
William Meltzer	ACF Region II
Maria Vazquez	ACF Region II
Shari Brown	ACF Region II
Sharon Morris	OCFS/DDPS Home Office
Nancy E. Griffin	OCFS Albany Regional Office
Kerri Barber	OCFS Albany Regional Office
Susan Burns	Albany County DSS
Jamie Dombroski	Fulton County DSS
Sharyn Liebman	New York City ACS
Veronica Lynch	OCFS Finance
Janice Mc-Govern-Johnson	OCFS Finance
Mike Ginock	OCFS Finance
Christine Heywood	OCFS/DDPS Home Office
John Conboy	OCFS Finance
John Murray	OCFS Finance
Tina McCarthy	OCFS Finance
Art Ambuhl	OCFS/DDPS Home Office
Mary Collier	OCFS/DDPS Home Office

# EXHIBIT C

Subj: **RESPONSE TO HANDLE WITH CARE BEHAVIOR MANAGEMENT INQUIRY: CRISIS INTERVENTION**  
Date: 8/10/2005 10:26:46 AM Eastern Standard Time  
From: [jscott@acf.hhs.gov](mailto:jscott@acf.hhs.gov)  
To: [Lawsomesq@aol.com](mailto:Lawsomesq@aol.com)  
CC: [mhiggins@acf.hhs.gov](mailto:mhiggins@acf.hhs.gov), [bandrews@acf.hhs.gov](mailto:bandrews@acf.hhs.gov), [sbrown@acf.hhs.gov](mailto:sbrown@acf.hhs.gov), [JSCOTT@ACF.HHS.GOV](mailto:JSCOTT@ACF.HHS.GOV), [JLin@acf.hhs.gov](mailto:JLin@acf.hhs.gov), [wmeltzer@acf.hhs.gov](mailto:wmeltzer@acf.hhs.gov), [mquintana@acf.hhs.gov](mailto:mquintana@acf.hhs.gov), [etorres-ortega@acf.hhs.gov](mailto:etorres-ortega@acf.hhs.gov), [mvazquez@acf.hhs.gov](mailto:mvazquez@acf.hhs.gov)

Ms. Adler,

I am pleased to provide a response to the policy question you raised in your e-mail message dated June 28, 2005 as follows:

Question

Please advise whether payments for training in crisis intervention [a.k.a. "restraint"] that are provided to private voluntary agencies are allowed expenses that New York State can apply for reimbursement under Title 4-E Foster Care grants.

ACF Response

In consultation with our Children's Bureau Policy Division in Washington, we are providing the following response for your information and reference.

A. No. Training in crisis intervention is not a reimbursable training expense under title IV-E. Generally speaking, to be allowable, training must be related to the examples of allowable administrative costs necessary for the administration of the foster care program at 45 CFR 1356.60(c)(2). Training on how to perform a particular service or intervention is not reimbursable, although training that provides general knowledge related to the types of services that might appropriately be provided to a child or family is reimbursable.

Although the topic is unallowable, we want to clarify who can be trained under the title IV-E program. States may only claim title IV-E training funds at the 75% Federal financial participation (FFP) rate for employees of the State agency or individuals preparing for employment with the State agency. Furthermore, the State is permitted to claim at the 50% FFP rate to train private agency employees under contract with the State to perform administrative functions for the State. Otherwise, the State may not claim for any funds, administrative or training, for the purpose of training private agency employees.

I hope that this is helpful to you. If you have questions, please let me know.

Junius Scott

Program Manager

Youth and Family Services Division



**Office of State and Youth Programs**

**Administration for Children and Families**

**26 Federal Plaza - Room 4114**

**New York, New York 10278**

**(212) 264-2890, ext. 145**

**FAX: (212) 264-0013**

**E-mail: [jscott@acf.hhs.gov](mailto:jscott@acf.hhs.gov)**

# **EXHIBIT D**

18000

MEMORANDUM OF AGREEMENT

MOU 189

between

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

and

CORNELL UNIVERSITY

on behalf of its Statutory Colleges

GENERAL TERMS

This Memorandum of Agreement (MOA) entered into as of this 1st day of October 1994 between the New York State Department of Social Services, a New York State government agency located at 40 North Pearl Street, Albany, New York 12243 (Department) and Cornell University, a not-for-profit, educational institution and the Morrill Land Grant institution of the state incorporated under chapter 585 of the laws of 1865 of the State of New York (University), acting on behalf of its statutory colleges. This Memorandum of Agreement sets forth the understanding of the parties in relation to the funding and administration of a variety of Federal and University supported, State-sponsored social services training programs.

1. Purpose of the Memorandum of Agreement

The purpose of this MOA is:

To fulfill the related missions of the University's statutory charge as partner with and on behalf of state government to pursue the educational and general life improvement needs of the people of New York State, and the Department's responsibility as the state agency created to fulfill the social service needs of the state;

To carry out the intent of the parties with regard to optimizing procedures for funding and administering a variety of Federal and University supported, State-sponsored social services training programs in the pursuit of the parties' common public service mandate;

To implement the requirements of the State Operations Budgets beginning with those of the budget enacted by the State Legislature in 1994 and extending in support of future state budgets, subject to appropriation of the funds necessary to support the activities contemplated under this MOA and its incorporated work plans and budgets; and

To set forth the agreement of the parties with regard to each party's respective responsibilities and obligations in maintaining and improving effective fiscal administration and operation of these training programs at selected statutory colleges housed at Cornell.

**2. Cooperation of All Parties and Incorporation of Appendices, Work Plans, and Budgets**

The Department and University shall fully cooperate in the implementation of this MOA and, subject to all applicable legal requirements, pledge to continue their cooperation to carry out the public purposes set forth herein. Both parties agree to use their best efforts to carry out the programs as described in such work plans and budgets as may be approved under this MOA and subject to its terms. Both parties additionally pledge to use their best efforts to carry out the requirements of the following, which are incorporated into and comprise this MOA in the following order of precedence:

- Memorandum of Agreement General Terms
- Appendix A, Standard Provisions of Department of Social Services Training Services Agreements
- Appendix B, Affirmative Action Definitions, Evaluation Requirements, and Curriculum Development.

**3. University as Agent Overseeing its Statutory Colleges under the General Supervision of the State University Trustees**

Article 115 of the Consolidated Education Law of New York State codifies the Charter of Cornell University as amended over time from its original enactment by the New York State Legislature under Chapter 585 of the Laws of 1865. Pursuant to Article 115, the University is responsible for the management and fiscal administration for all education, research, extension teaching and related public service, including, specifically, training programs which are carried out at the state-funded colleges housed and operated at the University under the general supervision of the state university trustees. It is understood and agreed by the parties that the University does not have sufficient funds available to fully fund the training programs which are the subject of this MOA. Therefore, the parties pledge to diligently exercise every effort to secure all necessary reviews and approvals as expeditiously as possible, but in no event later than the start date of services as specified in work plans and budgets incorporated hereunder, with the possible exception of the first year of services provided under this MOA.

**4. Work Plans and Budgets**

**4.1 Submission of Work Plans and Budgets**

The University agrees that separate project work plans, including associated project budgets, shall be submitted to the Department for each training program to be conducted by a statutory college of the University. Project work plans must be completed in accordance with the terms of this MOA and as applicable, instructions and forms contained in the Department's annual Request for Proposals. Subject to Department approval, work plans and budgets shall be completed in accordance with Department and University discussions

for ongoing or special programs in fulfillment of the parties related statutory missions. Project work plans, budgets, and their corresponding amendments must be incorporated hereunder prior to commencement or modification of services and shall be approved in accordance with this MOA.

#### 4.2 Modification of Project Work Plans and Budgets

Project work plans and/or project budgets may be modified upon the mutual agreement of the Department and the University. Such modifications, along with unanticipated program developments, may affect the scope of and require changes in incorporated project activities and corresponding budget amounts. In accordance with any such modifications or developments, funding, project work plans, or other elements comprising the training programs incorporated hereunder shall be correspondingly modified. Such modifications shall be incorporated under this MOA within 30 days of agreement between the parties.

Project budgets may be modified to the extent of ten (10) percent of any cost category, except shifts in personnel and changes to the work plan, without Department approval. Modifications in excess of ten (10) percent, as well as personnel, staffing plan, and work plan changes must be completed and approved in accordance with the instructions and forms contained in the Department's "Training Contract Operations Manual." The Department will notify the University, in writing, of budget modification approval, or, also in writing, of disapproval and particularize the reasons for such disapproval. The gross or reimbursed amounts of modified work plans may not be increased.

### 5. Funding

The following funding provisions shall apply to all approved programs unless alternate funding provisions are negotiated and agreed to by both parties to this MOA.

#### 5.1 Total Approved Funding Levels and Budget Formats

The total amount available and reimbursable for specified federal fiscal years shall be set forth in each proposed work plan and associated budget as from time-to-time amended, in accordance with Section 3 and shall be approved as part of the annual funding approval process. The project work plan budgets, as described in Section 4, shall identify by major budget category the gross total program costs for each approved project work plan, reimbursable amounts, and any non-Federal matching funds which shall include the Department's administrative fee.

#### 5.2 Advance Payments

As long as this MOA is in effect, the Department shall advance payment to the University up to 25 percent of the total.

reimbursable amount of each training program funded for the fiscal year. These advance payments will be made via standard voucher. These advances may be processed by the Department upon the final approval of this MOA, each work plan and associated budget, and receipt by the Department of properly executed State Standard Vouchers (AC-92), in a form acceptable to the Department and to the Comptroller of the State of New York.

Any interest accrued on funds paid to the University by the Department shall be deemed to be the property of the Department and shall either be credited to the Department at the closeout of the program or expended on additional services provided for the program.

- In the event either party terminates the MOA or any training program included in it, prior to its expiration, the University agrees to refund to the Department immediately any advance balance related to the terminated training program then outstanding, except for funds required for outstanding obligations. Such refund will be made as soon as practicable but no longer than 30 days following notice of termination to allow for reconciliation of outstanding obligations.

### 5.3 Repayment of Advance

The 25% advance payments to the University shall be recouped by crediting, in four equal amounts, the advance against the 8th, 9th, 10th and 11th standard vouchers. If the amount of any monthly claim is not sufficient to cover the proportionate advance amount to be recouped, then the 12th and/or final vouchers will be reduced until the advance is fully recovered. In any instance where an advance is not fully recovered under this procedure, the University shall return the unrecovered advance to the Department or the Department, at its option, may recover the advance from any payment otherwise payable to the University.

## 6. Monthly Expenditure Report and Certification

### 6.1 Monthly Expenditure Reports

Within thirty calendar days after the end of each month for which this MOA is in effect, the University shall submit to the Department a properly executed State Standard Voucher (AC-92) setting forth the University's billing of expenditures for each project work plan for the preceding month. Each such voucher shall be executed by an authorized official of the University. Each voucher and expenditure summary shall identify by major budget category the gross program costs for each work plan, reimbursable amounts, and any non-Federal matching funds which shall include the Department's administrative fee. Final vouchers shall be submitted to the Department within ninety (90) days of the completion or termination date of each program work plan.

#### 6.2 10% Withhold

The Department reserves the right to withhold up to 10% of the reimbursable amount per training program as security for the faithful completion of services under this MOA and accordance with its terms. Said amount to be paid to the University upon receipt and approval by the Department of all required reports, all products of the projects, a final billing of expenditures, and the accounting for the advance payment made pursuant to this MOA.

#### 6.3. Designated Payment Office

The University agrees to submit all standard voucher claims for billing expenditures for reimbursement and processing to the Designated Payment Office which, for the purpose of this MOA, will be the Department's Office of Human Resource Development. The Department agrees to submit all payments in relation to this MOA to the University's lock box address at P.O. Box 1354, Albany, NY 12201.

### 7. Disallowances and On-site Audit

#### 7.1 Department Disallowance

Based upon the information provided by the University in the expenditure reports as described in Section 6, the Department may, to the extent expenses claimed by the University are not in accordance with the terms of this MOA, assess training program disallowances to be deducted from reimbursement to the University. The Department shall notify the University of the adjustments, disallowances and disapprovals in writing, and such notification shall set forth the applicable reasons. If applicable, disallowances shall not be made by the Department to the final close-out voucher unless advance notice is made in writing to the University. The University will then be given the appropriate opportunity to respond to the reasons for the proposed disallowance before the voucher is processed for payment.

#### 7.2 Federal Disallowances

The Department reserves the right to deduct any Federal disallowances relating to training programs under this MOA from future reimbursements to the University to the extent such disallowances are for expenses claimed by the University not in accordance with the terms of this MOA upon notice to the University as provided in this MOA.

#### 7.3 On-Site Audit

The University shall permit Department staff, on dates mutually agreeable to both parties, to perform an annual on-site audit of source documents supporting expenditures reported. All source

documents shall be made readily available by the University for use by the Department during the audit. The University will also allow the Department to initially review the University's processes and procedures for internal auditing and billing of Department sponsored projects under this MOA at the beginning of each MOA period.

#### 8. Disputes

If a dispute arising out of this MOA cannot be settled through negotiation, the parties agree to submit such dispute to the Director, Division of the Budget, who has jurisdiction to resolve matters affecting State financial operations monies and to abide by any award rendered.

#### 9. Changes

This MOA may be modified only by written amendment signed by authorized representatives of the Department and University.

#### 10. Miscellaneous

##### 10.1 Partial Invalidity

If any term or provision of this MOA, or the application of any term or provision to any person or circumstance shall, to any extent, be held invalid or unenforceable by any court or administrative authority of competent jurisdiction, the remainder of this MOA, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected and shall be valid and enforceable to the extent permitted by law.

##### 10.2 Paragraph Headings

The headings of the various sections of this MOA are for the convenience of reference only and in no way define, limit, modify, or describe the scope or intent of this MOA or in any way affect its implementation.

##### 10.3 Governing Law

This MOA shall be governed by, and construed in accordance with, the laws of the State of New York, and Federal grant requirements set forth in 45 CFR Part 74.



10.4 Notices

Unless otherwise specifically provided in this MOA, any notice by a party to the MOA must be in writing, signed by the party giving it, and shall be served either personally, by New York State messenger service, or by mail addressed as follows:

To Department:

Director  
Office of Contract Management  
Department of Social Services  
40 North Pearl Street  
Albany, New York 12243

To University:

Director  
Office of Sponsored Programs  
Cornell University  
120 Day Hall  
Ithaca, New York 14853

All notices become effective only when received by addressee.

IN WITNESS of the intent of the parties hereto to cooperate with one another to advance the purposes of the MOA in the manner stated herein, the parties have signed this MOA as of the date first above written.

DEPARTMENT OF SOCIAL SERVICES

By: John M. Sullivan, OCT 27 1994

Office of Contract Management  
DIRECTOR  
OFFICE OF CONTRACT MANAGEMENT

CORNELL UNIVERSITY

By: Jack W. Lowe  
Jack W. Lowe  
Director, Office of Sponsored  
Programs

## APPENDIX A

### Standard Provisions of Department of Social Services Training Services Agreements

Pursuant to the terms of this Memorandum of Agreement, it is mutually understood that the following Standard Provisions will be incorporated to ensure that the terms and conditions of the MOA are carried out during its fiscal administration and operation of the training programs under the MOA.

Subject to the MOA, the parties mutually agree to incorporate the following understandings:

#### 1. Deliverables and Reports

(a) The University represents and agrees to establish appropriate means to ensure ongoing communication between the Department and the University so as to inform the Department of significant program developments. The University agrees to submit to the Department, within ten (10) days of occurrence, in writing, a description of any and each problem which threatens the successful completion of this MOA together with a recommendation for resolution whenever possible. Upon receipt of such written description, the Department agrees to respond to the the University in writing offering its appraisal of the situation and recommendation for further course of action.

(b) The University shall submit required program reports including quarterly reports and a final report submitted to the Department in a timeframe and format prescribed in the Department's "Training Contract Operations Manual." The University shall submit the final report within sixty (60) days of the completion or termination date of the annual work plans and associated budgets. The Department shall review and approve said report within a reasonable time after submission.

(c) The University shall prepare, in a format prescribed in the Department's "Training Contract Operations Manual," quarterly reports describing work performance and providing such other information as may be required on project activities, including three (3) copies of all training materials such as curricula, instructional materials, worksheets, handouts, reprints, exercises, assessment instruments, and any other material used in the learning process. The University shall maintain in its own record, for review by the Department, a trainee list for each specified training activity.

In addition, the University shall prepare in a format prescribed by the Department a quarterly report describing the efforts of the University to comply with the provisions of paragraphs 2 (e) and 3 and the Affirmative Action Plan required pursuant to paragraph 2 (c) and (d). This affirmative action quarterly report shall include, but not be limited to, personnel actions that have resulted in changes in the Staffing Plan and analysis of total awards/expenditures to subcontractors and vendors. The University agrees to make available to the Department, on request, the information and data used in compiling such reports.

(d) The University agrees to submit plans for each specified training activity to the Department for review and advance approval which conform with Department program objectives and priorities. Such program plans shall be submitted to the Department thirty (30) days prior to the implementation of training.

## 2. Personnel and Affirmative Action

(a) It is the policy of the Department to encourage the employment of qualified applicants/recipients of public assistance by both public organizations and private enterprises who are under contractual agreement to the Department for the provision of goods and services. The University will be expected to make best efforts in this area. The Department may require the University to demonstrate how it has complied or will comply with the aforesaid policy.

(b) The University agrees to comply with the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1967 as amended, the Federal Rehabilitation Act of 1973 as amended, and Executive Order No. 11246 entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375 and as supplemented in Department of Labor Regulations, 41 CFR, Part 60, and to observe all applicable Federal regulations contained in 45 CFR, Part 84, and 28 CFR, Part 41.

(c) The University shall adhere to and implement fully the nondiscrimination policy of the Department as it relates to affirmative action, equal employment opportunity, and the utilization of minority business enterprises and minority community-based organizations.

(d) The University agrees to designate a college-level supervisory individual whose responsibility shall be to develop and implement for the training programs under this MOA, an affirmative action plan acceptable to the Department.

(e) The University shall possess and comply with an Affirmative Action Plan for the training programs under this MOA which is acceptable to the Department prior to the effective date of the annual work plans. The Affirmative Action Plan shall include, but not be limited to, outreach efforts for protected class and minority candidates (as those terms are defined in Appendix B); liaison with community-based organizations; proposal for maintaining minimum workforce levels for project duration; procedures for preparation and submission of periodic affirmative action reports; and procedures for outreach to solicitation of Minority Business Enterprises (MBEs) as subcontractors and vendors of this project.

(f) The University represents and agrees that on the date of the annual commencement of services under this MOA, the staff performing the work will be as set forth in the project work plans. In addition, the University will advise the Department immediately of any anticipated changes in its Staffing Plan during the term of each annual work plan.

(g) The University will use their best efforts to employ, where possible, recipients of public assistance and care, as that term is defined in Section 2.18 of the Social Services Law of New York State, in accordance with their staffing plan. The University will document this in their quarterly and final reports.

(h) The Department represents and agrees to provide the University with technical assistance in carrying out the provisions of paragraphs 2(e) and 3. Such assistance will include, but not limited to, identification of potential personnel, vendors and/or subcontractors.

(i) The University will identify for prior approval of the Department, in writing, the person (s) who will be responsible for directing the work to be done under the University contract as well as other principal project personnel. No change or substitution of any such project personnel will be made without prior written approval from the Department.

### 3. Subcontracts

(a) The University will not enter into any subcontracts (as defined in the Department's Training Guidelines) for the performance of the obligations under this MOA without the prior written approval of the Department except for subcontractors with a value of less than Five Thousand Dollars (\$5,000). All agreements between the University and subcontractors shall be in writing. All such subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of the MOA, that nothing contained in such subcontract shall create any contractual relation between any subcontractor and the Department, and that nothing contained in the subcontract shall impair the rights of the Department under the MOA. The University shall be responsible for compliance by all subcontractors with this MOA, statutes, regulations, and executive orders set forth in paragraph 2 of this Appendix, as well as the New York State Executive Law Sections 290-299 and the Civil Rights Law of New York State.

(b) It is the Department's policy, pursuant to Executive Order No. 21, to require contractors to undertake effective affirmative action efforts to ensure, where possible, the utilization of minority and women-owned business enterprises as subcontractors, vendors, and suppliers (hereinafter referred to for brevity as "subcontractors"). The University will attempt to achieve the following goals in carrying out the MOA: that ten to fifteen percent of the total dollar amount expended under each work plan for subcontracting activity, as defined above, if any, be awarded to subcontractors which are minority-owned business enterprises and women-owned enterprises.

### 4. General Schedule and Payment

(a) Each request for payment submitted by the University to the Department shall be supported by accounting records maintained at the University's places of business which shall show time or level of effort expended by staff members for which such requisitions are submitted,

and which shall document the expenditures made and obligations incurred by the University in support of project activities. Said accounting records will be available to the Department. They shall be retained by the University and kept according to generally accepted accounting principles and be available for audit examination or review for a period of six (6) years after completion of the annual project work plans or after notification of an audit.

(b) The University shall not submit to the Department any claim that has previously been paid either by the State or by other funding sources.

(c) The University agrees to obtain prior written approval from the Department for conference and seminar attendance.

(d) The University agrees that funds received from other sources for specific services already paid for by the State shall be reimbursed to the State.

#### 5. Publications, Copyrights, and Inventions

Subject to Federal Standards as set forth in 45 CFR Parts 6 and 8, the Department shall have unlimited right to reproduce, distribute, and utilize any training materials and supplies produced as a result of training programs under this MOA for any purpose whatsoever, provided, however, that the United States Department of Health and Human Services shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise distribute, and to authorize others to use the training materials, supplies and inventions or work for government purposes.

#### 6. Information Access

Officials (including auditors) of the United States Department of Health and Human Services, the Comptroller General of the United States, the State Department of Social Services, the State Division of the Budget, and the Office of the State Comptroller, or their duly authorized representative, shall have access to and the right to examine any books, documents, papers, and records of the University involving transactions related to this MOA.

#### 7. Equipment

Unless otherwise specifically agreed by representatives of the University and Department, all equipment purchased from monies under this MOA shall at all times be the property of the Department and shall, at the Department's option, either be returned to the Department, or accounted for to the satisfaction of the Department at the termination of this MOA, provided, however, that if the University shall enter into additional contracts with the Department, the University shall have the right to renegotiate the continued use of the equipment.

8. Confidentiality

Consistent with Department policy, the University will use their best efforts to safeguard the confidentiality of all information utilized by or in the possession of the University under this MOA where such information is subject to Federal and State confidentiality statutes and regulations. The University represents and agrees to protect and maintain the confidentiality of all such information in conformity with the provisions of applicable Federal and State statutes and regulations.

9. Termination

(a) This MOA may be terminated by mutual written agreement of the parties to the MOA.

(b) To the extent permitted by law, this MOA may be deemed in the sole discretion of the Department terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the University. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the University.

(c) This MOA may be terminated by the University or Department for cause or upon the failure to comply with the terms and conditions of its agreement, provided that notice specifying such cause or failure is provided. Such written notice shall be delivered as follows:

Director, Office of Sponsored Programs  
Cornell University  
120 Day Hall  
Ithaca, New York 14853

Director, Office of Contract Management  
Department of Social Services  
40 North Pearl Street  
Albany, New York 12243

Such termination shall be effective immediately upon receipt of such notice. Under the terms of the MOA the University agrees not to incur new obligations or to claim for any expenses incurred after receipt of the notification of termination.

(d) Should the Department determine that Federal or State funds are unavailable, the Department shall deem this MOA terminated immediately. The Department agrees to give timely notice to the University in the event of termination under this paragraph. If the initial notice is oral notification, the Department shall follow this up immediately with written notice. The Department will be obligated to pay the University only for the expenditures made and obligations incurred by the University until such time as notice of termination is received either orally or in writing by the University from the Department.

10. Additional Assurances

(a) the University will comply with all applicable standards, orders, or requirements of Section 306 of the Clean Air Act, 45 USC 1857 (h), Section 504 of the Clean Water Act (33 USC 1398), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15). The University shall report violations to the Department and to the United States Environmental Protection Agency, Assistant Administrator for Enforcement.

(b) the University will be bound by the terms and conditions of the Affirmative Action Definitions; Evaluation Requirements and Curriculum Development as set forth in Appendix B.

(d) the Department and University shall recognize applicable mandatory standards and policies relating to energy efficiency contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act of 1975 (P.L. 94-165) and any amendment thereto.

(e) the University agrees to comply with the Department's requirements for project implementation, payments, changes, reporting and evaluation, as set forth in the Department's annually issued training manual entitled, "Training Contract Operations Manual;" and any interim updates and any other modifications to such manual, shall be mutually agreed to by the Department and the University.



## APPENDIX B

### AFFIRMATIVE ACTION DEFINITIONS

For the purpose of this MOA, the following definitions shall apply:

1. **Minority Business Enterprise.** Any business enterprise which is at least fifty-one percentum owned by, or in the case of a publicly owned business, at least fifty-one of the stock of which is owned by, citizens or permanent resident aliens who are Black, Hispanic, Asian and Pacific Islander, or American Indian or Alaskan Native, and such ownership interest is real, substantial, and continuing. The minority and women-owned ownership must have and exercise the authority to independently control the business decisions of the entity
2. **Women-owned Business Enterprise.** Any business enterprise which is at least fifty-one percentum owned by, or in the case of publicly owned business, at least fifty-one percentum of the stock of which is owned by citizens or permanent aliens who are women, and such ownership interest is real, substantial and continuing.

For the purposes of this MOA, it is understood that the definition of protected class is:

Legally identified groups that are specifically protected by statute against employment discrimination. Protected class encompasses minorities, women, Vietnam Era Veterans, disabled persons and others by virtue of the law or court decisions interpreting the law.

#### Definitions of Specific Categories of Protected Class:

##### 1. Ethnic Categories

Black (not of Hispanic Origin) - a person having origins in any of the black racial groups of the original peoples of Africa.

Hispanic - a person of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race.

Asian or Pacific Islander - a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

Native American or Alaskan Native - a person having origins in any of the original peoples of North America, and who maintains cultural identification through affiliation or community recognition.

2. Disabled Person - any person who (a) has a physical or mental impairment that substantially limits one or more major life activities; (b) has a record of such impairments, or (c) is regarded as having such an impairment.
3. Vietnam Era Veterans - any person who was in active Military Service between January 1, 1963 and May 7, 1975.

## EVALUATION REQUIREMENTS

OHRD has developed a set of minimum evaluation requirements to ensure that the timely and reliable information is reported to OHRD and which will allow for the ongoing improvement of training. The evaluation reporting should comprehensively and objectively assess the effectiveness of the training and whether or not the major training objectives were met.

We recognize that for some courses, some of the evaluation requirements may not be applicable. Accordingly, alternative evaluation proposals from contractors will be considered; however, requests must be made in writing and approved by OHRD. These evaluation requirements represent minimum requirements which may be supplemented by either the contractor or OHRD.

These requirements are based on standard evaluation methodologies frequently utilized for the type of training we fund, and are not intended to restrict contractors in their evaluation strategies.

For those contractors who wish to propose an alternative evaluation plan, OHRD will still require that the basic intent of these guidelines be met. The alternative plan must include provisions for obtaining (1) the reactions of every trainee in every course. For those courses given at least three times, it must also (2) measure the learning achieved by the trainees whether that learning included increased knowledge, improved skills, or the modification of attitudes. It must also include (3) follow-up study to assess the value of the training to the agency or agencies whose staff receives the training. This should either improve job performance or provide measurable cost savings or both.

The following is a listing of the minimum evaluation requirements for all training curriculum and are subject to the same prior review and approval process. In addition, OHRD may periodically conduct an independent survey of trainees to assess the impact of training on job performance.

1. A post-course trainee reaction questionnaire is required for all participants in every course.
2. A pre- and post-test of trainee knowledge on the subject matter presented is required for all courses offered three or more times.
3. A ninety-day follow-up a sample of trainees and supervisors to assess the impact of training on job performance must be conducted for all courses offered three or more times. The basic evaluation methodology, including a valid sampling plan, for accomplishing this must be included in the proposal.
4. A complete evaluation of all courses completed during a quarter must be included in the quarterly report for that period.
5. Each proposal must include an evaluation plan describing how these requirements are to be met for all training covered by the proposal.
6. Contractors should continually assess the training and evaluation efforts to ensure that they adequately address the training objectives.

Evaluation instruments are considered part of any training curriculum and are subject to the same prior review and approval process.

### CURRICULUM DEVELOPMENT

In accordance with the MOA, all training curriculum must be reviewed by OHRD prior to the implementation of the training. When submitting curriculum for OHRD review and approval, the following format should be used. This information should be completed for each session in the training course.

#### Rationale

- List the specific objectives for the session in question.
- Phrase the objectives in behavioral terms, stating what new skills, knowledge or attitudes trainees will be able to demonstrate by the end of the session, and how they will be demonstrated.

#### Key Concepts

- Identify the key concepts to be presented and provide an outline indicating the sequence of their presentation.

#### Methods/Activities

- Describe in detail the training methods and group activities to be used during the session, e.g. role plays, small group discussions, films.
- Provide the time allotted for each activity.
- Provide a topic outline for lectures.
- Provide focusing questions to be used with films, group discussions, etc.

#### Handouts

- Include samples of any materials to be distributed during the session, e.g. worksheets, exercises, reading material.

#### Resources

- Include a bibliography of resources utilized during the session's development, including names of consultants when appropriate.

#### Evaluation

- Provide a copy of the evaluation instruments to be used in conjunction with the training.

# **EXHIBIT E**

CIVIL SERVICE LAW § 161; EDUCATION LAW §§ 350(3), 352(3), 353, 355, 357, 390, 5701, 5711, 5712, 5714, 5715; EXECUTIVE LAW § 310; PUBLIC OFFICERS LAW § 73; RETIREMENT AND SOCIAL SECURITY LAW § 40; STATE FINANCE LAW §§ 5, 53-a, 112.

Agreements between state agencies and Cornell University to procure academic services from the statutory or contract colleges administered by Cornell should be regarded as contracts between a state party and a non-state party.

September 14, 2005

Alan P. Lebowitz  
General Counsel  
Office of the  
New York State Comptroller  
110 State St.  
Albany, New York 12236

Formal Opinion  
No. 2005-F2

Dear Mr. Lebowitz:

In a prior opinion of this office, we concluded that two state agencies cannot enter formal contracts with one another, but can execute memoranda of understanding to memorialize substantive aspects of interagency agreements. See 1980 Op. Att'y Gen. 81. You have asked whether, within the meaning of our prior opinion, agreements between state agencies and Cornell University to procure academic services from Cornell's "statutory or contract colleges" ("Statutory Colleges") should be regarded by the Office of the State Comptroller as memoranda of understanding between two state parties or as contracts between a state party and a non-state party. Because the governing statutes and case law emphasize Cornell University's autonomy over the administration of the Statutory Colleges with respect to academic matters, we conclude that such agreements should be viewed as contracts, not interagency memoranda of understanding.

#### **BACKGROUND**

##### **A. Cornell's Statutory Colleges**

Cornell University is a private institution incorporated under article 115 of the Education Law. See Education Law §§ 5701 et seq. Among its eighteen academic units, Cornell administers four colleges pursuant to specific statutory directives and contractual agreements between Cornell and the State. These statutory or contract colleges, which are situated

on Cornell's campus, include the N.Y. State College of Veterinary Medicine, the N.Y. State College of Agriculture and Life Sciences, the N.Y. State College of Human Ecology, and the N.Y. State School of Industrial and Labor Relations. See Education Law §§ 5711, 5712, 5714, 5715.

"Statutory or contract colleges" are defined by the Education Law as "[c]olleges furnishing higher education, operated by independent institutions on behalf of the state pursuant to statute or contractual agreements." Education Law § 350(3). Although operated by independent institutions, they are part of the system of the State University of New York ("SUNY"), see Education Law § 352(3), and thus subject to the general supervision of the SUNY trustees, see id. §§ 355(1)(a), 357.

The Court of Appeals has noted "the hybrid statutory character" of the Statutory Colleges, describing them as "unique, sui generis institutions created by statute - public in some respects, private in others." Stoll v. N.Y. State Coll. of Veterinary Med., 94 N.Y.2d 162, 166, 167 (1999). Under the governing statutory scheme, "Cornell has significant autonomy over academic activities at the colleges but is accountable to the trustees of the State University of New York and other state agencies for the manner in which public funds are expended." Alderson v. N.Y. State Coll. of Agric. & Life Sciences at Cornell Univ., 4 N.Y.3d 225, 227 (2005).

Cornell has been expressly authorized "as the representative of the [SUNY] trustees" to administer the Statutory Colleges

as to the establishment of courses of study, the creation of departments and positions, the determination of the number and salaries of members of the faculty and other employees thereof, the appointment and employment thereof, the maintenance of discipline and as to all matters pertaining to its educational policies, activities and operations, including research work.

Education Law §§ 5711(2), 5712(2), 5714(3), 5715(6). The SUNY trustees must approve the appointment of the head of each Statutory College. Education Law § 355(1)(e).

The Statutory Colleges are supported in part by public funds. Alderson, 4 N.Y.3d at 227. Pursuant to the statutes governing each college, the SUNY trustees "maintain general

supervision over requests for appropriations, budgets, estimates and expenditures" of the colleges. Education Law §§ 5711(3), 5712(3), 5714(4); see id. § 5715(6)(c). All monies received during the course of administering a Statutory College are kept in a separate fund and are to be used by Cornell exclusively for that college. Funds appropriated by the State for a Statutory College may be expended by Cornell "upon vouchers approved by the chancellor" of SUNY, or by such person as the chancellor shall designate. Education Law §§ 5711(3), 5712(3), 5714(4), 5715(6)(c). Cornell must submit an annual report to the SUNY trustees containing a detailed statement of the colleges' finances, and must consult the SUNY trustees regarding tuition for the colleges. Education Law §§ 5711(4)-(5), 5712(4)-(5), 5714(5)-(6), 5715(6).

Additionally, although Cornell has custody and control over the buildings, furniture, and other property furnished by the State for each Statutory Colleges, such property remains the property of the State. Education Law §§ 5711(2), 5712(2), 5714(3), 5715(5); see also id. § 355(1)(q), (r) (SUNY trustees have authority over facilities development for Statutory Colleges).

#### **B. Agreements Between Cornell and State Agencies for Services from the Statutory Colleges**

Certain state agencies, including the Office of Children and Family Services ("OCFS") and the Office of Temporary Disability Assistance ("OTDA"), regularly enter into agreements with Cornell to procure services from the Statutory Colleges. Pursuant to those agreements, the Statutory Colleges offer various training programs that further the missions and purposes of the state agencies and provide job-related training to agency personnel. Training programs have addressed, for example, the improvement of the quality of residential childcare by means of therapeutic crisis intervention and institutional child abuse prevention. These training programs are provided by the Statutory Colleges as part of their academic mission.

You have indicated that in the past agreements between state agencies and Cornell for services from the Statutory Colleges have been treated by your office as Memoranda of Understanding ("MOUs") between two state agencies. However, more recently your office has requested that state agencies enter such agreements by contract. While recognizing that the Statutory Colleges are in part publicly funded, your office believes that the agreements are most appropriately treated as formal contracts, subject to

the approval of the Comptroller, see State Finance Law § 112 (requiring that state contracts in excess of \$15,000 be approved by the State Comptroller), rather than as interagency agreements. OCFS and OTDA have submitted correspondence expressing the view that the agreements should be regarded as MOUs in light of the unique hybrid statutory character of the Statutory Colleges. Alternatively, OCFS and OTDA suggest that the MOU format may be appropriate if Cornell, when it acts on behalf of a Statutory College to enter an agreement for services, acts as a "state agency" within the meaning of a 1980 opinion of this Office, which is summarized below.<sup>1</sup>

**C. The 1980 Opinion of this Office Regarding Agreements  
Between State Agencies**

On June 9, 1980, we issued a formal opinion ("1980 Opinion") to SUNY concluding that two state agencies cannot enter into a contract with each other. 1980 Op. Att'y Gen. 81. A contract, we observed, requires at least two distinct contracting parties. Where two state agencies enter into an agreement, however, "there is only one entity - the State." Id. While state agencies are therefore precluded from forming contracts with one another, nothing precludes state agencies from entering into agreements setting out their respective rights and obligations, albeit agreements that are not enforceable by recourse to the remedies available under contract law. As we explained:

Unquestionably, New York State agencies, departments, divisions, offices and other units can enter into "agreements" with each other, but they are not contracts in the context of the law of contracts. They are interagency memoranda of understanding about who is to do what, whose budget is to support what expenditures, who is to report to whom about the progress of the undertaking, who is to get the final product, if there is one, and the like. . . . In case of disagreement, the units could hardly sue each other; the

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<sup>1</sup> Our opinion issued today is limited to the question whether these agreements should be treated by your office as interagency agreements or as contracts between a state agency and non-state entity. We do not address the specific terms that agreements between Cornell and state agencies should contain or what form those agreements should take.



dispute would have to be settled inside the State government.

Id.

As we also made clear, the reasoning of our 1980 Opinion applied only where entities of the State that have no separate legal status are the only parties to an agreement. Thus, state agencies may enter into contracts with municipalities or other local governmental units, and even with other "entities of the State," so long as those entities have separate legal status:

This opinion is limited to those entities of the State that have not been created as separate legal entities. Many, but not necessarily all, public authorities and public benefit corporations created by the State are separate entities with which the State can contract. The State may, of course, enter into formal contracts with municipalities and other local governmental entities that have the power to enter into contracts. (We note that the State University itself is a "corporation" [Education Law § 352], but has been held to be "an integral part of the government of the State and when it is sued the State is the real party." State University of New York v Syracuse University, 285 App. Div. 59 [3d Dep't 1954].) An agency proposing to enter into an "agreement" with an authority or a corporation may have to determine whether a contract or an interagency memorandum of understanding is the appropriate document to use.

Id.

**ANALYSIS**

You have asked whether, pursuant to our 1980 Opinion, agreements between state agencies and Cornell to procure services from the Statutory Colleges are properly regarded by your office as MOUs or, alternatively, as contracts. Applying the principle that two state agencies cannot form a contract with one another is a complicated task here, for the Statutory Colleges are neither state agencies nor wholly private institutions. They are

rather, as noted above, "hybrid" entities, "public in some respects, private in others." Stoll, 94 N.Y.2d at 166, 167. While Cornell, which enters the agreements on behalf of the colleges, is undoubtedly a private institution, it administers the Statutory Colleges as the representative of the SUNY trustees, who are themselves public officers. See Education Law § 353.

We note that the Legislature has expressly determined that the Statutory Colleges should be treated similarly to state agencies for certain purposes.<sup>2</sup> However, no statute directly controls the situation presented here; no statute, that is, expressly determines whether vel non the Statutory Colleges, or Cornell as their administrator, are state agencies for purposes of entering agreements for services. Cf. State Finance Law § 53-a(5)(b) (defining "state agency" for purposes of applications for state participation in certain federally-funded programs as including institutions authorized by law to act as agent for the State, including Cornell University as representatives of the SUNY trustees for the administration of the statutory colleges).

The Statutory Colleges, in keeping with their hybrid character, and Cornell itself insofar as it administers the colleges, have been treated by the courts like state or public entities for some purposes and like private entities for others. Thus, the colleges have been held to be non-state entities where plaintiffs have sought damages from the State for tortious conduct allegedly committed by the colleges or their employees. See, e.g., Effron v. State, 208 Misc. 608 (Ct. Cl. 1953); Green v. State, 107 Misc. 557 (Ct. Cl. 1919). The Court of Appeals has determined that for purposes of New York's Freedom of Information Law ("FOIL"), which applies to state and other public agencies, the nature of the documents being sought will determine whether

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<sup>2</sup> For example, certain statutes grant employees of the Statutory Colleges benefits that are generally available to state and other public employees, including health insurance, see Civil Service Law § 161, participation in the deferred compensation plan, see State Finance Law § 5(8)(b), and membership in the state retirement system, see Retirement and Social Security Law § 40(b)(2)(a); Education Law § 390(3) (Optional Retirement Program). The Legislature has also expressly excluded the Statutory Colleges, or Cornell as their administrator, from the scope of certain statutory requirements, such as participation by minority group members and women in state contracts, see Executive Law § 310(11)(a)(iii), and the conflict of interest standards applicable to state officers and employees, see Public Officers Law § 73(1)(g).

they are subject to the statutory disclosure requirements: for example, Cornell's disciplinary records relating to the Statutory Colleges need not be disclosed, Stoll, 94 N.Y.2d at 168, nor documents "pertaining to research and other academic activities" of the Statutory Colleges, since those are matters over which Cornell "exercises complete autonomy and control." Alderson, 4 N.Y.3d at 232. But documents "involving financial records and expenditures or sources of funding" for the Statutory Colleges are subject to FOIL, since "[t]he Legislature did not cede complete control of financial issues to the discretion of Cornell." Id. at 232, 233. Additionally, the Third Department has held that where Cornell's Board of Trustees addresses matters relating to the Statutory Colleges, its deliberations must be open to the public pursuant to the Open Meetings Law, on the ground that the Board is then "conduct[ing] public business and perform[ing] a governmental function for the State." Holden v. Bd. of Trustees of Cornell Univ., 80 A.D. 2d 378, 381 (3d Dep't 1981).

Given the lack of clear legislative or judicial direction, in order to determine whether the agreements at issue are in the nature of contracts or interagency MOUs, we first review the reasoning on which our 1980 Opinion was based. Central to that opinion was the axiom that no formal contract exists where a single party purports to take on contractual obligations to itself. Thus, we observed that a putative indemnification clause in an agreement between state agencies was without force, since "the State can hardly indemnify itself." 1980 Op. Att'y Gen. 81. Relatedly, we intimated that no contract exists where the terms of an agreement are not enforceable by means of contract remedies. We emphasized that should a dispute arise among the parties to an interagency MOU, it could not be resolved by litigation. "[T]he dispute would have to be settled inside the State government." Id. We concluded our analysis with the observation that "[t]his opinion is limited to those entities of the State that have not been created as separate legal entities." Id. A state entity is not "separate" for these purposes, we suggested, where, as with SUNY, the entity separately incorporates but remains "'an integral part of the government of the State and when it is sued the State is the real party.'" Id. (quoting State Univ. of N.Y. v. Syracuse Univ., 285 A.D. 59, 61 (3d Dep't 1954)).

Application of that reasoning to the circumstances here suggests that the agreements about which you have inquired are in the nature of contracts, rather than interagency MOUs. Central to our conclusion is the fact that Cornell has been granted autonomy over the administration of the Statutory Colleges with

respect to academic matters. See Education Law §§ 5711(2), 5712(2), 5714(3), 5715(6); Alderson, 4 N.Y.3d at 227. That is, when a state agency enters an agreement with Cornell regarding the provision of academic services by a Statutory College, the agreement concerns matters over which Cornell exercises autonomy and control. Additionally, as noted, the "hybrid" character of the Statutory Colleges notwithstanding, when a claim is brought for negligence on the part of a Statutory College, Cornell, not the State, is the real party in interest. See Green v. Cornell Univ., 233 N.Y. 519 (1922); Neish v. John Deere Co., 118 Misc. 2d 459, 460 (Sup. Ct. 1983); Effron, 208 Misc. 608; Green, 107 Misc. 557. Similarly, faculty and staff at the Statutory Colleges have been deemed employees of Cornell, not of the State. Neish, 118 Misc. 2d at 460; 1958 Op. Att'y Gen. 159 (because officers and employees of statutory colleges are not state employees, they are entitled to participate in state health insurance program only to extent benefits are expressly conferred on them); 1928 Op. Att'y Gen. 215. In light of these factors, we believe agreements between state agencies and Cornell for academic services from the Statutory Colleges should be treated as contracts with non-state entities under the analysis of our 1980 Opinion.

Our conclusion is supported by the Court of Appeals' recent decision in Alderson. There, as noted, the Court held that documents relating to the research and academic activities of a Statutory College were not subject to FOIL, since those are matters controlled by Cornell, not the State. The agreements at issue here relate to the provision of academic services. The decision to provide those services is made by Cornell, not by a state officer or entity. Nor does the State control the content of any training program carried out pursuant to an agreement. The training programs are, in other words, "activit[ies] over which Cornell, as manager of the statutory colleges, exercises autonomy and control." Alderson, 4 N.Y.3d at 232.

While it is true that the Statutory Colleges expend state money in the course of carrying out the training programs, that fact alone does not make agreements providing for those services akin to interagency memoranda of understanding.<sup>3</sup> State money may

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<sup>3</sup> In your opinion request, you recognize the public nature of the funding of the Statutory Colleges. We likewise believe that the state funds supporting the Statutory Colleges' academic programs do not lose their public nature because these programs are administered by Cornell University. This conclusion flows from the fact that the Legislature has required that such funds be segregated and used exclusively for the Statutory Colleges, see Education Law §§ 5711(3), 5712(3), 5714(4), 5715(6)(c), and

be expended for all of the Statutory Colleges' academic activities, but the Court of Appeals nonetheless concluded in Alderson that, in view of Cornell's "broad authority" over academic matters, a Statutory College's academic activities are "a private function." 4 N.Y.3d at 232-33. Likewise, here we conclude that while state funds are expended to carry out the training programs, the programs are performed by the Statutory Colleges as part of their academic mission, an area over which Cornell exercises autonomy and control. Thus, the source of the funding for the Statutory Colleges' services is not dispositive of the question before us. Rather, the key here is the nature of the activities at issue. Accordingly, we believe that when a state agency enters an agreement with Cornell for the provision of such services, the agreement is best viewed as a contract between a state agency and non-state party.

For similar reasons, we reject the proposition that the agreements should be regarded as MOUs because of the special statutory relationship between Cornell, as administrator of the Statutory Colleges, and SUNY. The SUNY Trustees supervise the administration of the Statutory Colleges principally with respect to the colleges' finances. See Education Law § 355(4)(a) (SUNY Trustees authorized and empowered to review and coordinate Statutory Colleges' budget and appropriation requests). As noted, the agreements at issue here concern not the disbursement of public funds but rather the colleges' academic activities, a matter within Cornell's autonomy and control. "Neither the SUNY trustees nor any other state agency participate in decisions relating to [the Statutory Colleges'] prospective or ongoing research [and academic] pursuits." Alderson, 4 N.Y.3d at 232. Since the statutory scheme gives Cornell, a private entity, autonomy to determine the colleges' academic activities, agreements between Cornell and state agencies in respect of those activities are not in the nature of interagency MOUs.

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has "maintained the right to oversee Cornell's use of public funding in the management of the statutory colleges." Alderson, 4 N.Y.2d at 233 ("To the extent that Cornell is accountable for the expenditure of public funds, it is performing a public function.").

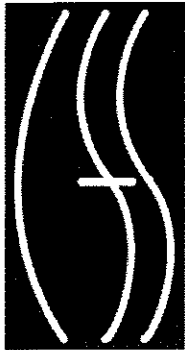
**CONCLUSION**

For the foregoing reasons, we conclude that agreements between state agencies and Cornell to procure academic services by the Statutory Colleges are properly regarded by your office as contracts, not as interagency MOUs.

Very truly yours,

ELIOT SPITZER  
Attorney General

# **EXHIBIT F**



New York State  
Office of  
Children & Family  
Services

# **GRANTEE PROVIDER MANUAL**

**JULY, 2003**

(Revised 6/18/04)

**John A. Johnson**  
**Commissioner**

**Roger Biagi**  
**Executive Deputy Commissioner**

**Prepared by the Contract Process Improvement Workgroup**



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## INTRODUCTION

This manual contains the New York State Office of Children and Family Services (OCFS) policies and procedures governing contractual agreements with not-for-profit, for-profit, governmental, and educational organizations. Areas covered by this document include contract implementation, contract payments, including instructions on how to prepare a voucher, contract changes, reporting, and monitoring.

Although these policies and procedures apply to all contracts administered by OCFS, specific procedures relating to training and administrative activities and Americorps contracts may vary. Training and administrative activity-specific procedures are contained in the Training and Administrative Activities Contract Operation Manual. Call 518-473-4474 to obtain a copy of this manual. For specific procedures relating to Americorps contracts administered by the OCFS' Office of Youth Development, please consult the Project Director Handbook, which can be found at <http://www.americorps.org/resources/handbook02-03.pdf>, the Americorps Provisions located at <http://www.americorps.org/resources/provisions/2002ACProvisions.pdf> and the Fiscal Manual which is provided to new Americorps contractors each year.

“OCFS Contract Manager”, which is referenced throughout the manual, is the contractor’s direct contact throughout the life of the contract. They are available to assist in understanding and following the policies and procedures described in this manual. Contractors are strongly encouraged to consult their copy of the governing solicitation document prior to contacting their OCFS contract manager whenever they have questions or need assistance.

### **\*\*\*IMPORTANT REMINDERS\*\*\***

Any anticipated change in a contract may require prior approval by the (OCFS), the State Attorney General (AG) and the Office of the State Comptroller (OSC).

Contractors may not assign their rights, title or interest in their contracts, or transfer, convey, sublet, or otherwise dispose of their contracts without the **prior consent, in writing**, of the OCFS. Any attempts to assign the contract without the OCFS' written consent are null and void.

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## G. Consultants/Subcontracts/Purchase of Service Agreements

A contractor is the institution, expert, or organization that has entered into a contract with OCFS that has been approved by the Office of the State Comptroller. A subcontractor is an institution, individual, or organization external to the contractor that has entered into an agreement with the contractor, to provide any service outlined in or associated with the contract, and whose services are to be funded under the contract budget. This includes consultant and purchase of service agreements. All such agreements are to be by bona fide written contract. If agreements include travel, related costs must be budgeted and reimbursed consistent with State rates (<http://www.osc.state.ny.us/agencies/travel/travel.htm>). Obtain three price quotes/bids on contractor's letterhead for construction/renovation work if the work is for \$15,000 or more per job, and a statement indicating which contractor has been selected. If other than the low bidder is selected, a statement must be submitted indicating why that vendor was selected.

Contractors must get prior written approval from OCFS for any agreement, or series of agreements, with a single subcontractor for a total of \$15,000 or more including travel during the contract term (period). The contractor must receive such approval prior to executing the subcontract agreement, implementing any activity under its term, or expending contract funds under its terms. Prior approval is also required for any cost or term amendment to approved subcontracts.

For prior approval, contractors should include draft subcontracts of \$15,000 or more in value, including travel, with their proposal submission, to their OCFS contract manager. If there are any additional subcontracts or changes to subcontract agreements during the contract period, they must be submitted to your contract manager for approval.

Each subcontract, irrespective of its monetary value, must specify:

- work objectives that are clearly defined and measurable;
- the work to be performed by the subcontractor in accordance with the terms of the parent contract, detailing all tasks involved in the performance of the agreement;
- the total number of hours or days of service provided;
- the dates of service within the legal term (period) of the prime contract;
- consistent dates of service throughout the subcontract and its attachments;
- the rate and term of payment;
- that reimbursement to the subcontractor depends upon satisfactory completion of services

Additional clauses to the subcontract language must state:

# EXHIBIT G



New York State  
Office of  
Children & Family  
Services

March 20, 2003

George E. Pataki  
Governor

John A. Johnson  
Commissioner

Bruce Chapman  
President  
Handle With Care  
184 McKinstry Road  
Suite A  
Gardiner, New York 12525

Capital View Office Park

52 Washington Street  
Rensselaer, NY 12144-2796

Re: Training

Dear Mr. Chapman:

This letter is in response to the series of recent faxes sent by Handle With Care, Inc. to me and other OCFS staff in which your company asks "is Handle With Care afforded the same opportunity as Cornell/TCI to conduct training within OCFS?" I must point out that Handle With Care, Inc. has misquoted me in the letter sent by your company to a number of voluntary authorized agencies in relation to Handle With Care, Inc. negotiating training contracts directly with individual voluntary agencies.

The quotation used by Handle With Care, Inc. in its correspondence to voluntary authorized agencies was a partial quotation taken out of context from my letter dated December 2, 2002 to your company that was addressing this issue of Handle With Care, Inc. contracting with the State of New York. The State of New York currently has a training contract with Cornell University to provide training for staff of voluntary authorized agencies. This contract is currently on going. Should this contract be re-bid, Handle With Care, Inc. as well as other entities wishing to respond to an issued request for proposals (RFP) would be afforded the same opportunity to complete for a State contract as any other entity.

OCFS offers no opinion regarding any negotiations your company may enter into with voluntary authorized agencies regarding crisis management and restrict training other than to point out the requirement for voluntary



authorized agencies to comply with the restraint standards set forth in 18  
NYCRR 441.17

Very truly yours,



John E. Stupp  
Assistant Deputy Counsel

JES:rj

cc: Gail H. Gordon  
Larry Brown  
John Ouimet  
Christine Heywood

# EXHIBIT H



March 18, 2004

**New York State  
Office of  
Children &  
Family  
Services**

Ms. Denise Clarke, Director  
Cornell University  
Office of Sponsored Programs  
120 Day Hall  
Ithaca, New York 14853

Dear Ms. Clarke:

This letter serves to inform you we have begun to take the first step of many that are necessary to reduce some of the administrative burden that was outlined to you in a letter dated February 3 regarding "Streamlining the Contract Process" guideline recommendations. These guidelines were a result of a collaborative effort among many stakeholders.

George E. Pataki  
*Governor*

John A. Johnson  
*Commissioner*

One of the recommendations was to eliminate the requirement to track "training and administrative" activities for "non-IV-E" funded projects. As a result, we have removed the DAB-1666 and All Other Administrative Sub-budgets from the proposals you submitted for 2004 projects that are "non-IV-E" funded.

*Capital View Office Park*

52 Washington Street  
Rensselaer, NY  
12144-2796

Shortly, you will be receiving 2004 Contract Approval letters along with the approved contract. Please take note of these omitted documents in these approved contracts. Further, the claims associated with these particular projects, no longer require DAB-1666 or Administrative activity monthly fiscal reporting.

For your convenience, enclosed is a listing of 2004 contracts. This listing is broken down project by project and indicates whether or not it is "IV-E" funded or "non-IV-E" funded. Please feel free to reference this document to verify whether or not a particular project is IV-E funded for 2004.

I think you will agree that the reduction of forms and fiscal reporting is a significant step towards our commitment to improve the processes of our respective Offices.

Sincerely,

*S/ Peter D. Miraglia*

Peter D. Miraglia, Director  
Bureau of Training

**Enclosure**

Cc: Gwen Ames, OSP Cornell  
Moncrieff Cochran, Cornell University  
Stephen Goggin, Cornell University  
Marcia Calicchia, Cornell University  
Michael Nunno, Cornell University  
Carol Frament, BT  
Bruce Muller, BT  
Bob Hagstrom, BT  
Jim Djemes, BT  
Patsy Murray, BT

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## CORNELL PROJECT LISTING

2004 Non IV-E Funded Projects: DC02  
ST05

2004 Projects with IV-E Funding: LDST03  
RC03



# EXHIBIT I

DSS-3101 (Rev. 4/96), <b>APPLICATION FOR TRAINING &amp; ADMINISTRATIVE ACTIVITIES CONTRACT</b>	<b>CONTRACT PERIOD</b> From 1/1/98 to 12/31/98	<b>PROJECT BUDGET</b>  \$ 2,029,989
NEW YORK STATE  DEPARTMENT OF SOCIAL SERVICES		

<b>ORGANIZATION NAME, ADDRESS AND TELEPHONE NUMBER</b>	<b>PROJECT ADDRESS AND TELEPHONE NUMBER (if different)</b>
Cornell University, Office of Sponsored Programs 123 Day Hall Ithaca, New York 14853	Child Protective Services Training Institute Family Life Development Center College of Human Ecology G-20 MVR Hall Ithaca, New York 14853

<b>OFFICIAL AUTHORIZED TO SIGN CONTRACT (Name and Title)</b>	<b>PRINCIPAL INVESTIGATOR (Name)</b>
Denise J. Clark, Assistant Director of Office of Sponsored Programs	Dr. James Garbarino, and Dr. Michael A. Nunno, Co-Principal Investigators

<b>OFFICIAL SIGNATURE</b>	<b>PRINCIPAL INVESTIGATOR SIGNATURE</b>
	

<b>ORGANIZATION'S FEDERAL TAX IDENTIFICATION NUMBER</b>
15-600-2250-A2

<b>INCORPORATION (Check Out)</b>
Incorporated <input checked="" type="checkbox"/> Not Incorporated

Identify state in which organization is incorporated: New York	If not incorporated, check type of organization
If organization is not incorporated in NY, is it authorized to do business in NY Yes No	Partnership
	Sole Proprietorship
	Unincorporated Association
	Other (Please specify)

Check type of Corporation
Business Membership
Religious Other (Please specify)
Not for Profit/NYS Department of State Charitable Registration Number 15-600-2250-A2
Or exemption (Please specify) Non-Profit -Section 101 (6) institution operated exclusively for educational purposes

<b>CHECK ALL THE TERMS BELOW WHICH APPLY TO THE ORGANIZATION:</b>
Small Business Organization MBE (Minority-Owned or Directed) WBE (Women-Owned or Directed)

<b>IF EDUCATIONAL INSTITUTION, IDENTIFY ACCREDITATION STATUS AND ACCREDITING BODY:</b>
Accredited - MSA, CSWE and NYS Education Department Registered Program

<b>LIST THE PROJECT CODE AND PROJECT TITLE:</b>
CC03.01: CPS Investigation Specialty Training;
CC03.02: CPS Advanced Topics;
RC03: Therapeutic Crisis Intervention in Residential Settings

COZ/217

7103e0

OCFS-3101 (Rev. 4/98)		CONTRACT PERIOD From 1/1/99 to 12/31/99	PROJECT BUDGET \$ 2,019,678
APPLICATION FOR TRAINING & ADMINISTRATIVE ACTIVITIES CONTRACT		DEPARTMENT OF SOCIAL SERVICES	
NEW YORK STATE SERVICES		DEPARTMENT OF SOCIAL SERVICES	
ORGANIZATION NAME ADDRESS AND TELEPHONE NUMBER		PROJECT ADDRESS AND TELEPHONE NUMBER (if different)	
Cornell University, Office of Sponsored Programs 123 Day Hall Ithaca, New York 14853		Child Protective Services Training Institute Family Life Development Center College of Human Ecology MVR Hall Ithaca, New York 14853	
OFFICIAL AUTHORIZED TO SIGN CONTRACT (Name and Title)		PRINCIPAL INVESTIGATOR (Name)	
Denise J. Clark, Assistant Director of Office of Sponsored Programs		Dr. James Garbarino, and Dr. Michael A. Nunno, Co-Principal Investigators	
OFFICIAL SIGNATURE <i>[Signature]</i> Sogran Nair Grant and Contract Officer Office of Sponsored Programs		PRINCIPAL INVESTIGATOR SIGNATURE <i>[Signature]</i>	
ORGANIZATION'S FEDERAL TAX IDENTIFICATION NUMBER 15-600-2250-A2			
INCORPORATION (Check Out) Incorporated <input checked="" type="checkbox"/> Not Incorporated			
Identify state in which organization is incorporated: New York		If not incorporated, check type of organization	
If organization is not incorporated in NY, is it authorized to do business in NY Yes No		Partnership Sole Proprietorship Unincorporated Association Other (Please specify)	
Check type of Corporation Business Membership Religious Other (Please specify)		<div style="border: 2px solid black; padding: 5px; text-align: center;"> <p><b>APPROVED</b></p> <p>BY <u><i>[Signature]</i></u></p> <p>DATE <u>2/2/99</u></p> </div>	
Not for Profit/NYS Department of State Charitable Registration Number 15-600-2250-A2			
Or exemption (Please specify) <u>Non-Profit -Section 101 (6) institution operated exclusively for educational purposes</u>			
CHECK ALL THE TERMS BELOW WHICH APPLY TO THE ORGANIZATION: Small Business Organization MBE (Minority-Owned or Directed) WBE (Women-Owned or Directed)			
IF EDUCATIONAL INSTITUTION, IDENTIFY ACCREDITATION STATUS AND ACCREDITING BODY: Accredited - MSA, CSWE and NYS Education Department Registered Program			
LIST THE PROJECT CODE AND PROJECT TITLE: CC03.01: CPS Investigation Specialty Training; CC03.02: CPS Advanced Topics; RC03: Therapeutic Crisis Intervention			

1021840

OCFS-3101 (Rev. 4/98), APPLICATION FOR TRAINING & ADMINISTRATIVE ACTIVITIES CONTRACT	CONTRACT PERIOD From 1/1/2000 to 12/31/2000 Revised 10/99	PROJECT BUDGET \$ 2,280,071
NEW YORK STATE	OFFICE OF CHILDREN AND FAMILY SERVICES	

ORGANIZATION NAME, ADDRESS AND TELEPHONE NUMBER Cornell University, Office of Sponsored Programs 123 Day Hall Ithaca, New York 14853	PROJECT ADDRESS AND TELEPHONE NUMBER (if different) Child Protective Services Training Institute Family Life Development Center College of Human Ecology MVR Hall Ithaca, New York 14853
---	---

OFFICIAL AUTHORIZED TO SIGN CONTRACT (Name and Title) Denise J. Clark, Assistant Director of Office of Sponsored Programs	PRINCIPAL INVESTIGATOR (Name) Dr. James Garbarino, and Dr. Michael A Nunno, Co-Principal Investigators
--	---

OFFICIAL SIGNATURE <i>Denise J. Clark</i>	PRINCIPAL INVESTIGATOR SIGNATURE <i>Michael A Nunno</i>
--	--

ORGANIZATION'S FEDERAL TAX IDENTIFICATION NUMBER  
15-600-2250-A2

INCORPORATION (Check Out)  
Incorporated  Not Incorporated

Identify state in which organization is incorporated: New York	If not incorporated, check type of organization
If organization is not incorporated in NY, is it authorized to do business in NY Yes No	Partnership Sole Proprietorship Unincorporated Association Other (Please specify)

Check type of Corporation  
Business Membership  
Religious Other (Please specify)

Not for Profit/NYS Department of State Charitable Registration Number 15-600-2250-A2

Or exemption (Please specify) Non-Profit -Section 101 (6) institution operated exclusively for educational purposes

CHECK ALL THE TERMS BELOW WHICH APPLY TO THE ORGANIZATION:  
Small Business Organization MBE (Minority-Owned or Directed) WBE (Women-Owned or Directed)

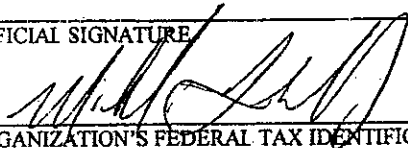
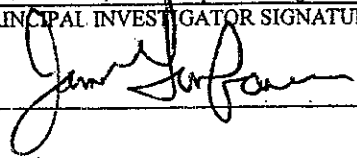
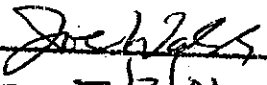
IF EDUCATIONAL INSTITUTION, IDENTIFY ACCREDITATION STATUS AND ACCREDITING BODY:  
Accredited - MSA, CSWE and NYS Education Department Registered Program

LIST THE PROJECT CODE AND PROJECT TITLE:  
CC03.01: CPS Investigation Specialty Training;  
CC03.02: CPS Advanced Topics;  
RC03: Therapeutic Crisis Intervention

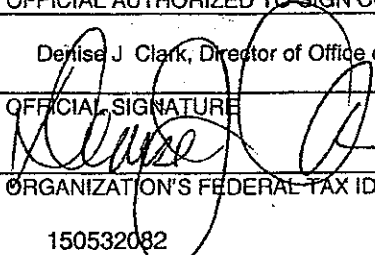
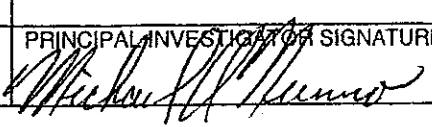
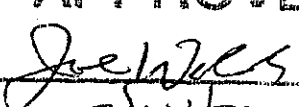
APPROVED

BY *James Walsh*  
DATE 3/22/00

1022508

OCFS-3101 (Rev 4/98), APPLICATION FOR TRAINING & ADMINISTRATIVE ACTIVITIES CONTRACT		CONTRACT PERIOD From 1/1/2001 to 12/31/2001 Revised 3/2001	PROJECT BUDGET \$ 2,915,320
NEW YORK STATE		OFFICE OF CHILDREN AND FAMILY SERVICES	
ORGANIZATION NAME, ADDRESS AND TELEPHONE NUMBER		PROJECT ADDRESS AND TELEPHONE NUMBER (if different)	
Cornell University, Office of Sponsored Programs 123 Day Hall Ithaca, New York 14853		Child Protective Services Training Institute Family Life Development Center College of Human Ecology MVR Hall Ithaca, New York 14853	
OFFICIAL AUTHORIZED TO SIGN CONTRACT (Name and Title)		PRINCIPAL INVESTIGATOR (Name)	
Michael Lenetsky, Grant & Contract Officer		Dr. James Garbarino, Dr. Michael A Nunno, and Dr. Carol Anderson, Co-Principal Investigators	
OFFICIAL SIGNATURE 		PRINCIPAL INVESTIGATOR SIGNATURE 	
ORGANIZATION'S FEDERAL TAX IDENTIFICATION NUMBER 15-0532082			
INCORPORATION (Check Out) Incorporated <input checked="" type="checkbox"/> Not Incorporated			
Identify state in which organization is incorporated: New York  If organization is not incorporated in NY, is it authorized to do business in NY Yes No		If not incorporated, check type of organization Partnership Sole Proprietorship Unincorporated Association Other (Please specify)	
Check type of Corporation Business Membership Religious Other (Please specify)		<div style="border: 2px solid black; padding: 5px; text-align: center;"> <p><b>APPROVED</b></p> <p>BY <u></u></p> <p>DATE <u>2/3/01</u></p> </div>	
Not for Profit/NYS Department of State Charitable Registration Number 15-0532082  Or exemption (Please specify) <u>Non-Profit -Section 101 (6) institution operated exclusively for educational purposes</u>			
CHECK ALL THE TERMS BELOW WHICH APPLY TO THE ORGANIZATION: Small Business Organization MBE (Minority-Owned or Directed) WBE (Women-Owned or Directed)			
IF EDUCATIONAL INSTITUTION, IDENTIFY ACCREDITATION STATUS AND ACCREDITING BODY: Accredited - MSA, CSWE and NYS Education Department Registered Program			
LIST THE PROJECT CODE AND PROJECT TITLE: CC03 01: CPS Investigation Specialty Training CC03 02: CPS Advanced Topics RC03: Therapeutic Crisis Intervention			


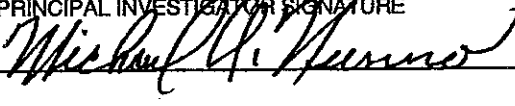
6023013

OCFS-3101 (Rev 4/98), APPLICATION FOR TRAINING & ADMINISTRATIVE ACTIVITIES CONTRACT NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES		CONTRACT PERIOD From 1/1/2002 to 12/31/2002	PROJECT BUDGET \$ 999,994
ORGANIZATION NAME, ADDRESS AND TELEPHONE NUMBER Cornell University, Office of Sponsored Programs 123 Day Hall Ithaca, New York 14853		PROJECT ADDRESS AND TELEPHONE NUMBER (if different) Child Protective Services Training Institute Family Life Development Center College of Human Ecology MVR Hall Ithaca, New York 14853	
OFFICIAL AUTHORIZED TO SIGN CONTRACT (Name and Title) Denise J. Clark, Director of Office of Sponsored Programs		PRINCIPAL INVESTIGATOR (Name) Dr. Michael A. Nunno, Principal Investigator	
OFFICIAL SIGNATURE 		PRINCIPAL INVESTIGATOR SIGNATURE 	
ORGANIZATION'S FEDERAL TAX IDENTIFICATION NUMBER 150532082			
INCORPORATION (Check Out) Incorporated <input checked="" type="checkbox"/> Not Incorporated			
Identify state in which organization is incorporated: New York  If organization is not incorporated in NY, is it authorized to do business in NY Yes No		If not incorporated, check type of organization Partnership Sole Proprietorship Unincorporated Association Other (Please specify)	
Check type of Corporation Business Membership Religious Other (Please specify)		<div style="border: 2px solid black; padding: 5px; text-align: center;"> <p><b>APPROVED</b></p> <p>BY </p> <p>DATE 3/14/02</p> </div>	
Not for Profit/NYS Department of State Charitable Registration Number 150532082			
Or exemption (Please specify) <u>Non-Profit -Section 101 (6) institution operated exclusively for educational purposes</u>			
CHECK ALL THE TERMS BELOW WHICH APPLY TO THE ORGANIZATION: Small Business Organization MBE (Minority-Owned or Directed) WBE (Women-Owned or Directed)			
IF EDUCATIONAL INSTITUTION, IDENTIFY ACCREDITATION STATUS AND ACCREDITING BODY: Accredited - MSA, CSWE and NYS Education Department Registered Program			
LIST THE PROJECT CODE AND PROJECT TITLE: RC03: Therapeutic Crisis Intervention			

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OCFS-3101 (Rev. 4/98), APPLICATION FOR TRAINING & ADMINISTRATIVE ACTIVITIES CONTRACT NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES		CONTRACT PERIOD From 1/1/2003 to 12/31/2003	PROJECT BUDGET  \$ 1,250,000
ORGANIZATION NAME, ADDRESS AND TELEPHONE NUMBER		PROJECT ADDRESS AND TELEPHONE NUMBER (if different)	
Cornell University, Office of Sponsored Programs 123 Day Hall Ithaca, New York 14853		Child Protective Services Training Institute Family Life Development Center College of Human Ecology MVR Hall Ithaca, New York 14853	
OFFICIAL AUTHORIZED TO SIGN CONTRACT (Name and Title)		PRINCIPAL INVESTIGATOR (Name)	
<i>Denise J. Clark</i> , Director of Office of Sponsored Programs		Dr. Michael A. Nunno, Principal Investigator	
OFFICIAL SIGNATURE <i>Denise J. Clark</i>		PRINCIPAL INVESTIGATOR SIGNATURE <i>Dr. Michael A. Nunno, VT</i>	
ORGANIZATION'S FEDERAL TAX IDENTIFICATION NUMBER  150532082			
INCORPORATION (Check Out)  Incorporated <input checked="" type="checkbox"/> Not Incorporated			
Identify state in which organization is incorporated: New York		If not incorporated, check type of organization	
If organization is not incorporated in NY, is it authorized to do business in NY Yes No		Partnership	
		Sole Proprietorship	
		Unincorporated Association	
		Other (Please specify)	
Check type of Corporation  Business Membership  Religious Other (Please specify)			
Not for Profit/NYS Department of State Charitable Registration Number 150532082			
Or exemption (Please specify) <u>Non-Profit - Section 101 (6) institution operated exclusively for educational purposes</u>			
CHECK ALL THE TERMS BELOW WHICH APPLY TO THE ORGANIZATION:  Small Business Organization MBE (Minority-Owned or Directed) WBE (Women-Owned or Directed)			
IF EDUCATIONAL INSTITUTION, IDENTIFY ACCREDITATION STATUS AND ACCREDITING BODY: Accredited - MSA, CSWE and NYS Education Department Registered Program			
LIST THE PROJECT CODE AND PROJECT TITLE: RC03: Therapeutic Crisis Intervention			

OCFS-3101 (Rev. 5/99)		CONTRACT PERIOD	PROJECT BUDGET
APPLICATION FOR TRAINING & ADMINISTRATIVE ACTIVITIES CONTRACT		From 1/1/2004 to 12/31/2004	\$ 1,250,000
OFFICE OF CHILDREN AND FAMILY SERVICES			
ORGANIZATION NAME, ADDRESS AND TELEPHONE NUMBER		PROJECT ADDRESS AND TELEPHONE NUMBER (if different)	
Cornell University, Office of Sponsored Programs 123 Day Hall Ithaca, New York 14853		Child Protective Services Training Institute Family Life Development Center College of Human Ecology MVR Hall Ithaca, New York 14853	
OFFICIAL AUTHORIZED TO SIGN CONTRACT (Name and Title)		PRINCIPAL INVESTIGATOR (Name)	
Gwen E. Ames, Sr. Grant & Contract Officer		Dr. Michael A. Nunno, Principal Investigator	
OFFICIAL SIGNATURE 		PRINCIPAL INVESTIGATOR SIGNATURE 	
ORGANIZATION'S FEDERAL TAX IDENTIFICATION NUMBER 150532082			
INCORPORATION (Check Out) Incorporated <input checked="" type="checkbox"/> Not Incorporated			
Identify state in which organization is incorporated: New York		If not incorporated, check type of organization	
If organization is not incorporated in NY, is it authorized to do business in NY Yes No		Partnership	
		Sole Proprietorship	
		Unincorporated Association	
		Other (Please specify)	
Check type of Corporation Business Membership Religious Other (Please specify)			
Not for Profit/NYS Department of State Charitable Registration Number 150532082			
Or exemption (Please specify) <u>Non-Profit -Section 101 (6) institution operated exclusively for educational purposes</u>			
CHECK ALL THE TERMS BELOW WHICH APPLY TO THE ORGANIZATION: Small Business Organization MBE (Minority-Owned or Directed) WBE (Women-Owned or Directed)			
IF EDUCATIONAL INSTITUTION, IDENTIFY ACCREDITATION STATUS AND ACCREDITING BODY: Accredited - MSA, CSWE and NYS Education Department Registered Program			
LIST THE PROJECT CODE AND PROJECT TITLE: RC03: Therapeutic Crisis Intervention			



# **EXHIBIT J**

## **CORNELL UNIVERSITY 2000 WORKPLAN REQUIREMENTS**

### **1. WORKPLANS**

- EACH WORKPLAN REQUIRES SEPARATE MONTHLY BILLINGS.

### **2. COSTS INCURRED, BILLED AND REPORTED**

- ALL COSTS INCURRED BILLED AND REPORTED MUST BE IN ACCORDANCE WITH ALL FEDERAL AND STATE LAWS AND REGULATIONS AS APPLICABLE, INCLUDING, BUT NOT LIMITED TO A-133, A-87, A-128, STATE FINANCE LAW, ETC. EACH BILLING MUST CONTAIN A SIGNED CERTIFICATION TO THIS EFFECT.

### **3. COST SHARING**

- AT LEAST MONTHLY ESTIMATED COST SHARING, WITH RECONCILIATION TO ACTUAL EXPENDITURES BY SEMESTER (DECEMBER, MAY, AUGUST), BY WORKPLAN, BY ACCOUNT (SEE ENCLOSURE PAGE FIVE) IS REQUIRED AND MUST BE PROVIDED WITH BILLINGS.
- COST SHARING MUST DIRECTLY RELATE TO SERVICES PROVIDED UNDER THE WORKPLAN.

### **4. ADMINISTRATIVE SERVICES ACTIVITIES (AS DEFINED IN THE TRAINING AND ADMINISTRATIVE ACTIVITIES CONTRACT OPERATIONS MANUAL AND GUIDELINES FOR THE SUBMISSION OF PUBLIC AGENCY WORKPLANS).**

- ADMINISTRATIVE SERVICES ACTIVITIES MUST BE IDENTIFIED, BY SUB-BUDGET, WITHIN EACH WORK PLAN. BILLINGS CANNOT EXCEED THE ADMINISTRATIVE SERVICE ACTIVITY ALLOCATION WITHOUT ADVANCE APPROVAL AS NOTED BELOW.
- REQUIRES TRACKING AND REPORTING AGAINST THE SUB-BUDGET, BY PROJECT AND OBJECT OF EXPENSE. PROJECT SPECIFIC REPORTING MUST BE PROVIDED WITH EACH BILLING.

### **5. DEPARTMENT APPEALS BOARD DECISION 1666 (DAB 1666) RELATED COSTS AND REPORTING**

- DAB 1666 RELATED COSTS MUST BE IDENTIFIED WITHIN EACH WORKPLAN (EXCLUDES SCHOOL-AGE CHILD CARE TRAINING AND YOUTH DEVELOPMENT WORKPLANS). BILLINGS CANNOT EXCEED THE DAB 1666 SUB-BUDGET ALLOCATION WITHOUT ADVANCE APPROVAL AS NOTED ABOVE.
- REQUIRES TRACKING AND REPORTING AGAINST THE WORKPLAN SUB-BUDGET(S) AND BY OBJECT OF EXPENSE. REPORTING MUST BE PROVIDED WITH EACH BILLING.

## CORNELL UNIVERSITY 2001 WORKPLAN REQUIREMENTS

1. **WORKPLANS**
  - EACH WORKPLAN REQUIRES SEPARATE MONTHLY BILLINGS.
2. **COSTS INCURRED, BILLED AND REPORTED**
  - ALL COSTS INCURRED BILLED AND REPORTED **MUST BE IN ACCORDANCE WITH ALL FEDERAL AND STATE LAWS AND REGULATIONS AS APPLICABLE, INCLUDING, BUT NOT LIMITED TO A-133, A-87, A-128, STATE FINANCE LAW, ETC. EACH BILLING MUST CONTAIN A SIGNED CERTIFICATION TO THIS EFFECT.**
3. **COST SHARING**
  - AT LEAST MONTHLY ESTIMATED COST SHARING, WITH RECONCILIATION TO ACTUAL EXPENDITURES BY SEMESTER (DECEMBER, MAY, AUGUST), BY WORKPLAN, BY PROJECT IS REQUIRED AND **MUST BE PROVIDED WITH BILLINGS.**
  - COST SHARING **MUST DIRECTLY RELATE TO SERVICES PROVIDED UNDER THE WORKPLAN**
4. **DEPARTMENT APPEALS BOARD DECISION 1666 (DAB 1666) RELATED COST AND REPORTING**
  - DAB 1666 RELATED COSTS **MUST BE IDENTIFIED FOR EACH WORKPLAN. BILLINGS CANNOT EXCEED THE DAB 1666 SUB-BUDGET ALLOCATION WITHOUT ADVANCE APPROVAL.**
  - REQUIRES TRACKING AND REPORTING AGAINST THE WORKPLAN SUB-BUDGET(S) BY PROJECT AND BY OBJECT OF EXPENSE. REPORTING **MUST BE PROVIDED WITH EACH BILLING.**
5. **BUDGET MODIFICATIONS WITHIN WORKPLANS**
  - REQUIRED FOR ALL PROPOSED PERSONAL SERVICE CHANGES REGARDLESS OF PERCENT OF CHANGE BETWEEN BUDGET CATEGORIES, AND ALL PROPOSED SHIFTS BETWEEN BUDGET CATEGORIES IN EXCESS OF 10%.
  - REQUIRES SIGNOFF BY PROGRAM AGENCIES AND OCFS.
  - ALL BUDGET MODIFICATION REQUESTS, FOR ALL YEARS, MUST BE SUBMITTED TO NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, BUREAU OF TRAINING AND WORKFORCE DEVELOPMENT, ROOM 224, RENSSELAER, NY, 12144 -- ATTN: MR. PATRICK ALLEN.
6. **WORKPLAN AMENDMENTS**
  - REQUIRED FOR ALL CHANGES IN SCOPE, ADDING OR SUBTRACTING TRAINING AND ADMINISTRATIVE SERVICES ACTIVITIES, INCLUDING SHIFTS BETWEEN PROJECT ACTIVITIES AND DELIVERABLES, AND ALL CHANGES TO FEDERAL DEPARTMENT APPEALS BOARD DECISION 1666 SUB-BUDGETS
  - REQUIRES SIGNOFF BY PROGRAM AGENCIES, OCFS AND THE DIVISION OF THE BUDGET.
7. **AFFIRMATIVE ACTION REQUIREMENTS**
  - AGENCIES ARE REMINDED THAT THEY MUST INDICATE THEIR PROGRESS IN ACHIEVING THE GOALS FOR THE UTILIZATION OF MBE'S AND WBE'S FOR CONTRACT RELATED PROCUREMENT OF GOODS FROM VENDORS AND SUBCONTRACTING ACTIVITIES.

## CORNELL UNIVERSITY 2002 WORKPLAN REQUIREMENTS

### 1. WORKPLANS

- EACH WORKPLAN REQUIRES SEPARATE MONTHLY BILLING

### 2. COSTS INCURRED, BILLED AND REPORTED

- ALL COSTS INCURRED BILLED AND REPORTED MUST BE IN ACCORDANCE WITH ALL FEDERAL AND STATE LAWS AND REGULATIONS AS APPLICABLE, INCLUDING, BUT NOT LIMITED TO A-133, A-87, A-128, STATE FINANCE LAW, ETC. EACH BILLING MUST CONTAIN A SIGNED CERTIFICATION TO THIS EFFECT.
- MONTHLY EXPENDITURE CLAIMS ARE REQUIRED TO BE SUBMITTED WITHIN 30 DAYS AFTER THE COMPLETION OF EACH MONTH OF THE WORKPLAN PERIOD.
- FINAL MONTHLY EXPENDITURE CLAIMS, EXCLUDING COST SHARING, ARE REQUIRED TO BE SUBMITTED WITHIN 90 DAYS OF THE COMPLETION OR TERMINATION DATE OF THE WORKPLAN.
- ALL EXPENDITURE CLAIMS MUST BE SUBMITTED TO THE NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, BUREAU OF TRAINING, FINANCE AND ADMINISTRATION UNIT, 52 WASHINGTON STREET, 2<sup>ND</sup> FLOOR, RENSSELAER, NY, 12144 -- ATTN: CLAIMS PROCESSING.

### 3. COST SHARING

- AT LEAST MONTHLY ESTIMATED COST SHARING, BY WORKPLAN, IS REQUIRED TO BE SUBMITTED WITH MONTHLY EXPENDITURE CLAIMS. RECONCILIATION TO ACTUAL COST SHARING CLAIMS ARE REQUIRED TO BE SUBMITTED WITHIN 120 DAYS OF THE END OF EACH SEMESTER (MAY, AUGUST, DECEMBER), AND MUST BE PROVIDED WITH MONTHLY CLAIMS.
- THE FINAL COST SHARING CLAIM IS REQUIRED TO BE SUBMITTED NO LATER THAN 180 DAYS OF COMPLETION OR TERMINATION OF EACH WORKPLAN.
- COST SHARING MUST DIRECTLY RELATE TO SERVICES PROVIDED UNDER THE WORKPLAN.

### 4. ADMINISTRATIVE SERVICES ACTIVITIES (AS DEFINED IN THE TRAINING AND ADMINISTRATIVE ACTIVITIES CONTRACT OPERATIONS MANUAL AND GUIDELINES FOR THE SUBMISSION OF PUBLIC AGENCY WORKPLANS).

- ADMINISTRATIVE SERVICES ACTIVITIES MUST BE IDENTIFIED, BY SUB-BUDGET, WITHIN EACH WORKPLAN. BILLINGS CANNOT EXCEED THE ADMINISTRATIVE SERVICE ACTIVITY ALLOCATION WITHOUT ADVANCE APPROVAL
- REQUIRES TRACKING AND REPORTING AGAINST THE SUB-BUDGET, BY PROJECT AND OBJECT OF EXPENSE. PROJECT SPECIFIC REPORTING MUST BE PROVIDED WITH EACH BILLING.

### 5. DEPARTMENT APPEALS BOARD DECISION 1666 (DAB 1666) RELATED COST AND REPORTING

- DAB 1666 RELATED COSTS MUST BE IDENTIFIED FOR EACH WORKPLAN. BILLINGS CANNOT EXCEED THE DAB 1666 SUB-BUDGET ALLOCATION WITHOUT ADVANCE APPROVAL.
- REQUIRES TRACKING AND REPORTING AGAINST THE WORKPLAN SUB-BUDGET(S) BY PROJECT AND BY OBJECT OF EXPENSE. REPORTING MUST BE PROVIDED WITH EACH BILLING.

## CORNELL UNIVERSITY 2003 WORKPLAN REQUIREMENTS

### 1. WORKPLANS

- EACH WORKPLAN REQUIRES SEPARATE MONTHLY BILLING.

### 2. COSTS INCURRED, BILLED AND REPORTED

- ALL COSTS INCURRED BILLED AND REPORTED MUST BE IN ACCORDANCE WITH ALL FEDERAL AND STATE LAWS AND REGULATIONS AS APPLICABLE, INCLUDING, BUT NOT LIMITED TO A-133, A-87, A-128, STATE FINANCE LAW, ETC. EACH BILLING MUST CONTAIN A SIGNED CERTIFICATION TO THIS EFFECT.
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- ALL EXPENDITURE CLAIMS MUST BE SUBMITTED TO THE NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, BUREAU OF TRAINING, FISCAL AND ADMINISTRATION SECTION, 52 WASHINGTON STREET, ROOM 227 NORTH, RENSSELAER, NY, 12144 – ATTN: CLAIMS PROCESSING.

### 3. COST SHARING

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- REQUIRES TRACKING AND REPORTING AGAINST THE WORKPLAN SUB-BUDGET(S) BY PROJECT AND BY OBJECT OF EXPENSE. REPORTING MUST BE PROVIDED WITH EACH BILLING.

## CORNELL UNIVERSITY 2004 WORKPLAN REQUIREMENTS

### 1. WORKPLANS

- OCFS WORKPLANS REQUIRE AN OVERALL MONTHLY BILLING.

### 2. COSTS INCURRED, BILLED AND REPORTED

- ALL COSTS INCURRED BILLED AND REPORTED MUST BE IN ACCORDANCE WITH ALL FEDERAL AND STATE LAWS AND REGULATIONS AS APPLICABLE, INCLUDING, BUT NOT LIMITED TO A-133, A-87, A-128, STATE FINANCE LAW, ETC. EACH BILLING MUST CONTAIN A SIGNED CERTIFICATION TO THIS EFFECT.
- MONTHLY EXPENDITURE CLAIMS ARE REQUIRED TO BE SUBMITTED WITHIN 30 DAYS AFTER THE COMPLETION OF EACH MONTH OF THE WORKPLAN PERIOD.
- FINAL MONTHLY EXPENDITURE CLAIMS, EXCLUDING COST SHARING, ARE REQUIRED TO BE SUBMITTED WITHIN 90 DAYS OF THE COMPLETION OR TERMINATION DATE OF THE WORKPLAN.
- ALL EXPENDITURE CLAIMS MUST BE SUBMITTED TO THE NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, BUREAU OF TRAINING, FISCAL AND ADMINISTRATION SECTION, 52 WASHINGTON STREET, ROOM 227 NORTH, RENSSELAER, NY, 12144 – ATTN: CLAIMS PROCESSING.

### 3. COST SHARING

- AT LEAST MONTHLY ESTIMATED COST SHARING, BY WORKPLAN, IS REQUIRED TO BE SUBMITTED WITH MONTHLY EXPENDITURE CLAIMS. RECONCILIATION TO ACTUAL COST SHARING CLAIMS ARE REQUIRED TO BE SUBMITTED WITHIN 120 DAYS OF THE END OF EACH SEMESTER (MAY, AUGUST, DECEMBER), AND MUST BE PROVIDED WITH MONTHLY CLAIMS.
- THE FINAL COST SHARING CLAIM IS REQUIRED TO BE SUBMITTED NO LATER THAN 180 DAYS OF COMPLETION OR TERMINATION OF EACH WORKPLAN.
- COST SHARING MUST DIRECTLY RELATE TO SERVICES PROVIDED UNDER THE WORKPLAN.

### 4. ADMINISTRATIVE SERVICES ACTIVITIES (AS DEFINED IN THE TRAINING AND ADMINISTRATIVE ACTIVITIES CONTRACT OPERATIONS MANUAL AND GUIDELINES FOR THE SUBMISSION OF PUBLIC AGENCY WORKPLANS).

- ADMINISTRATIVE SERVICES ACTIVITIES MUST BE IDENTIFIED, BY SUB-BUDGET, WITHIN EACH WORKPLAN. BILLINGS CANNOT EXCEED THE ADMINISTRATIVE SERVICE ACTIVITY ALLOCATION WITHOUT ADVANCE APPROVAL.
- REQUIRES TRACKING AND REPORTING AGAINST THE SUB-BUDGET, BY PROJECT AND OBJECT OF EXPENSE. PROJECT SPECIFIC REPORTING MUST BE PROVIDED WITH EACH BILLING.

### 5. DEPARTMENT APPEALS BOARD DECISION 1666 (DAB 1666) RELATED COST AND REPORTING

- DAB 1666 RELATED COSTS MUST BE IDENTIFIED FOR EACH WORKPLAN. BILLINGS CANNOT EXCEED THE DAB 1666 SUB-BUDGET ALLOCATION WITHOUT ADVANCE APPROVAL.
- REQUIRES TRACKING AND REPORTING AGAINST THE WORKPLAN SUB-BUDGETS(S) BY PROJECT AND BY OBJECT OF EXPENSE. REPORTING MUST BE PROVIDED WITH EACH BILLING.

# EXHIBIT K

TRAINING  
AND  
ADMINISTRATIVE  
ACTIVITIES

# PROJECT OPERATIONS MANUAL



NEW YORK STATE  
OFFICE OF CHILDREN  
AND FAMILY SERVICES  
HUMAN RESOURCES  
BUREAU OF TRAINING



## L. Departmental Appeals Board Decision Number 1666 (DAB 1666)

BT's Training and Administrative Programs are funded through a combination of State and Federal funds. Some of these funds have restrictions and/or specific reporting requirements. Title IV-E funding is the most restrictive of the Federal funding sources. Title IV-E funds are used for child welfare-related training. These contractual services include foster care, adoption, and prevention. There are separate reimbursement rates for Title IV-E: 75 percent for training activities and 50 percent for administration activities. Within each Title IV-E training contract/work plan there is an additional split between training and administrative activities that OCFS is required to track for Federal claiming.

***For training projects that include Title IV-E funds, both training and administrative deliverables and expenditure records must be segregated by training and administrative activities*** As a result, a number of reporting procedures and forms have been developed to promote proper record keeping and documentation.

These specific requirements for projects that include Title IV-E funding are outlined in ***DAB-1666***. This decision requires that in order for the State to receive enhanced Federal Financial Participation (FFP) for training costs, such costs must be of the type specified in the federal regulation 45 CFR 235.64. Contractor reimbursement for these costs may be limited to the level of FFP the State receives for these costs.

Additional information about the DAB 1666 decision can be found on the Federal Department of Health and Human Services website address:

<http://www.hhs.gov/dab/decisions/dab1666.html>

Information on 45 CFR can be found at the following Federal Department of Health and Human Services website addresses:

<http://frwebgate.access.gpo.gov/cgi-bin/cfr.cgi?TITLE=45&PART=1356&SECTION=60&YEAR=1998&TYPE=TEXT>

<http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=45&PART=235&SECTION=64&YEAR=1998&TYPE=TEXT>

Administrative activities costs and DAB 1666 costs are based on the sub-budgets contained in the contractors/vendors approved contract/work plan. ***DAB 1666 requirements only apply to projects that include Title IV-E funds.*** If a contract/work plan contains both training and administrative activities for projects that include Title IV-E funds, contractors/vendors are required to specify administrative activities costs separately. The following examples have been developed to assist contractors/vendors in distinguishing between training and administrative activities:

### **Examples of Training Activities:**

#### **Instruction**

- Stand-up training;
- Computer-based training (CBT) that provides training;
- Satellite teleconferences that provide training;

4. OCFS must notify the contractor/vendor of such defects or improprieties within 15 days of receipt of the claim to be consistent with the Prompt Payment requirements. These issues must be resolved before claims can be accepted for payment under the Prompt Payment timeframes.
5. At the conclusion of the contract/work plan, OCFS may withhold up to ten percent (10%) of the contract/work plan payments until receipt and acceptance of all reports and deliverables can be verified. These funds will be released for payment and the prompt payment timeframe will begin upon receipt of all deliverables, reports, and curricula. Curricula must be submitted with a completed *Final Curriculum and Material Submission Form (OCFS-4381)* See *Chapter 1*.

**B. Advance Payments**

Most contractors/vendors are eligible to receive advance payments. Details regarding advance payments are included within the OCFS contract/work plan. To receive an advance payment, a contractor/vendor must submit a signed voucher. The advance voucher must be paid within 30 days of the execution of the contract/work plan or receipt of the voucher, whichever is later.

The advance payment is part of the total contract/work plan and is *not* additional funding. The advance payment must be **paid back** to OCFS through the submission of acceptable claims for allowable expenses under the contract/work plan. OCFS reserves the right to deny requests for additional and/or re-issuance of advance payments if OCFS has determined there is insufficient time or deliverables remaining to allow the contractor/vendor to repay the advance within the terms of the contract/work plan.

Should a project fail to operate as anticipated and a claim cannot be made, an advance payment must be repaid to OCFS promptly. OCFS reserves the right to change the payment schedule, including the advance repayment schedule, if necessary.

**C. Claiming and Reimbursement**

While contract/work plan budgets are based on estimated costs, claims must be based on actual expenditures clearly in support of the deliverables and must be in sufficient detail to identify the items of expenditure. Contractors/vendors are liable to audit by the Office of the State Comptroller (OSC), OCFS, the U.S. Department of Health and Human Services (HHS) or the authorized representatives of any of these agencies. The procedures outlined in this section are designed not only to support reimbursement, but also to help provide readable **audit trails** of contractor/vendor claims.

Contractors/vendors are expected to follow the claiming instructions outlined in this chapter when claiming reimbursement. In addition, contractors/vendors will be required to submit a signed certification: ***“We certify that all costs incurred, billed and reported are in accordance with all Federal and State Laws and regulations as applicable including, but not limited to A-21, A-87, A-110, A-122, and A133 State Finance Law etc. as applicable, and there is appropriate supporting documentation for this claim period.”*** included on the ***Summary of Costs Form (OCFS-3106)***.

# EXHIBIT L

DSS-3106 (Rev 10/96)

Section 1

Period: Final Revised, 1998

*DAB1666*

SUMMARY OF COSTS (Training)			CONTRACTOR Cornell University		CONTRACT NUMBER MOU 0849 - (CPSTI 1999)	
SCHEDULE REFERENCE	BUDGET CATEGOR Y	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE	
A. DIRECT COST OTHER THAN TRAINEE COST	Personnel	\$430,038	(50.80)	359,764.59	70,273.41	
	Fringe Benefits	\$146,729	(12.86)	113,236.60	33,492.40	
	Equipment Rental		-	6,003.12	(6,003.12)	
	Equipment Purchase	\$47,425	249.00	30,368.00	17,057.00	
	Consumable Costs	\$23,094	(249.00)	12,781.23	10,312.77	
	Staff Travel	\$64,826	-	36,916.49	27,909.51	
	Consultant	\$48,100	-	-	48,100.00	
	Other	\$229,832	(297.11)	133,631.67	96,200.33	
	Total - Direct Cost other than Trainee		\$990,044	(360.57)	692,701.70	297,342.30
B TRAINEE COST	Stipends		-	-	-	
	Tuition and Fees		-	-	-	
	Travel and Per Diem	\$277,396	-	246,434.24	30,961.76	
	Total Trainee Cost	\$277,396	-	246,434.24	30,961.76	
C TOTAL COST	Total Direct Cost (Total A + B)	\$1,267,440	(360.57)	939,135.94	328,304.06	
	Indirect Cost Rate <u>59.05%</u>					
	Total Indirect Cost	\$762,549	-	535,622.32	226,926.68	
	Grand Total Project Cost	\$2,029,989	(360.57)	1,474,758.26	555,230.74	

**INSTRUCTIONS**

Each voucher should be based upon 100% of the project expenditures for the time period claimed

Voucher processing is closely correlated with the review of quarterly reports of training and administrative activities.

Vouchers will be processed only if these reports are submitted as required.

Project budgets may not be modified without prior approval of the Office of Human Resource Development.

DSS-3106 (Rev. 10/96)

Section 1

Period: Final Revised, 1998

*DAB1666*

SUMMARY OF COSTS (Administrative)		CONTRACTOR	CONTRACT NUMBER				
		Cornell University	MOU 0849 - (CPSTI 1999)				
SCHEDULE REFERENCE	BUDGET CAGEGORY	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE		
A DIRECT COST OTHER THAN TRAINEE COST	Personnel		-	-	-		
	Fringe Benefits		-	-	-		
	Equipment Rental		-	-	-		
	Equipment Purchase		-	-	-		
	Consumable Costs		-	-	-		
	Staff Travel		-	-	-		
	Consultant		-	-	-		
	Other		-	-	-		
	Total -	Direct Cost other than Trainee		-	-	-	
B TRAINEE COST	Stipends		-	-	-		
	Tuition and Fees		-	-	-		
	Travel and Per Diem		-	-	-		
	Total Trainee Cost		-	-	-		
C TOTAL COST	Total Direct Cost (Total A + B)		-	-	-		
	Indirect Cost Rate 59.05%						
	Total Indirect Cost			(359.95)	(359.95)	359.95	
	Grand Total Project Cost			(359.95)	(359.95)	359.95	

INSTRUCTIONS

Each voucher should be based upon 100% of the project expenditures for the time period claimed.

Voucher processing is closely correlated with the review of quarterly reports of training and administrative activities.

Vouchers will be processed only if these reports are submitted as required.

Project budgets may not be modified without prior approval of the Office of Human Resource Development.

OCFS-3106 (Rev 10/96)

Section 1

## DAB 1666 REPORT

Period: April, 1999

revised 3/8/2000  
WJ

SUMMARY OF COSTS (Total)		CONTRACTOR		CONTRACT NUMBER		
		Cornell University		MOU 0849 - (CPSTI 1999)		
SCHEDULE REFERENCE	BUDGET CATEGOR Y	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE	
DIRECT COST OTHER THAN TRAINEE COST	Personnel		-	-	-	
	Fringe Benefits		-	-	-	
	Equipment Rental		-	-	-	
	Equipment Purchase		-	-	-	
	Consumable Costs		-	-	-	
	Staff Travel		-	-	-	
	Consultant		-	-	-	
	Other		-	-	-	
	Total -	Direct Cost other than Trainee		-	-	-
TRAINEE COST	Stipends		-	-	-	
	Tuition and Fees		-	-	-	
	Travel and Per Diem		-	-	-	
	Total Trainee Cost		-	-	-	
TOTAL COST	Total Direct Cost (Total A + B)			-	-	
	Indirect Cost Rate <u>59.05%</u>					
	Total Indirect Cost (DAB 1666 rate = 26%)			19,023.08	72,136.98	-
	Grand Total Project Cost			19,023.08	72,136.98	-

## INSTRUCTIONS

Each voucher should be based upon 100% of the project expenditures for the time period claimed

Voucher processing is closely correlated with the review of quarterly reports of training and administrative activities.

Vouchers will be processed only if these reports are submitted as required

Project budgets may not be modified without prior approval of the Office of Human Resource Development.

**DAB 1666 REPORT**

Period: 1/1/2000 - 1/31/2000

SUMMARY OF COSTS (Total)			CONTRACTOR		CONTRACT NUMBER	
			Cornell University		MOU 0849 - (CPSTI 2000)	
SCHEDULE REFERENCE	BUDGET CATEGOR Y	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE	
A DIRECT COST OTHER THAN TRAINEE COST	Personnel		-	-	-	
	Fringe Benefits		-	-	-	
	Equipment Rental		-	-	-	
	Equipment Purchase		-	-	-	
	Consumable Costs		-	-	-	
	Staff Travel		-	-	-	
	Consultant		-	-	-	
	Other		-	-	-	
	Total -	Direct Cost other than Trainee		-	-	-
B TRAINEE COST	Stipends		-	-	-	
	Tuition and Fees		-	-	-	
	Travel and Per Diem		-	-	-	
	Total Trainee Cost		-	-	-	
C TOTAL COST	Total Direct Cost (Total A + B)		-	-	-	
	Indirect Cost Rate <u>59.05%</u> <sup>60</sup>					
	Total Indirect Cos (DAB 1666 rate = 26%)		\$225,170	9,732.72	9,732.72	-
	Grand Total Project Cost		\$225,170	9,732.72	9,732.72	753,444.28

363177

**INSTRUCTIONS**

Each voucher should be based upon 100% of the project expenditures for the time period claimed.

Voucher processing is closely correlated with the review of quarterly reports of training and administrative activities.

Vouchers will be processed only if these reports are submitted as required.

Project budgets may not be modified without prior approval of the Office of Human Resource Development

OCFS-3106 (Rev. 10/96)

Section 1

**DAB 1666 REPORT**

Period: 1/1/2001 - 7/31/2001

SUMMARY OF COSTS (Total)			CONTRACTOR Cornell University		CONTRACT NUMBER MOA 489 - (CPSTI 2001)	
SCHEDULE REFERENCE	BUDGET CATEGORY	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE	
A. DIRECT COST OTHER THAN TRAINEE COST	Personnel		-	-	-	
	Fringe Benefits		-	-	-	
	Equipment Rental		-	-	-	
	Equipment Purchase		-	-	-	
	Consumable Costs		-	-	-	
	Staff Travel		-	-	-	
	Consultant		-	-	-	
	Other		-	-	-	
	Total - Direct Cost other than Trainee		-	-	-	
B. TRAINEE COST	Stipends		-	-	-	
	Tuition and Fees		-	-	-	
	Travel and Per Diem		-	-	-	
	Total Trainee Cost		-	-	-	
C. TOTAL COST	Total Direct Cost (Total A + B)		-	-	-	
	Indirect Cost Rate 82.00%					
	Total Indirect Cost (DAB 1666 rate = 26%)	\$464,708	151,188.47	151,188.47	313,519.93	
	Grand Total Project Cost	\$464,708	151,188.47	151,188.47	313,519.93	

**INSTRUCTIONS**

Each voucher should be based upon 100% of the project expenditures for the time period claimed.

Voucher processing is closely correlated with the review of quarterly reports of training and administrative activities.

Vouchers will be processed only if these reports are submitted as required.

Project budgets may not be modified without prior approval of the Office of Human Resources Development



**DAB 1666 REPORT**

Period: 01/1/2002 - 03/31/2002

SUMMARY OF COSTS (Total)			CONTRACTOR	CONTRACT NUMBER		
			Cornell University	MOA 489 - (CPSTI 2001)		
SCHEDULE REFERENCE	BUDGET CATEGOR	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE	
A DIRECT COST OTHER THAN TRAINEE COST	Personnel		-	-	-	
	Fringe Benefits		-	-	-	
	Equipment Rental		-	-	-	
	Equipment Purchase		-	-	-	
	Consumable Costs		-	-	-	
	Staff Travel		-	-	-	
	Consultant		-	-	-	
	Other		-	-	-	
	Total -	Direct Cost other than Trainee		-	-	-
B TRAINEE COST	Stipends		-	-	-	
	Tuition and Fees		-	-	-	
	Travel and Per Diem		-	-	-	
	Total Trainee Cost		-	-	-	
C TOTAL COST	Total Direct Cost (Total A + B)		-	-	-	
	Indirect Cost Rate <u>61.50%</u>					
	Total Indirect Cost (DAB 1666 rate = 26%)		\$160,388	263832 24,824.60	24,824.60	135,562.90
	Grand Total Project Cost		\$160,388	24,824.60	24,824.60	135,562.90

**INSTRUCTIONS**

Each voucher should be based upon 100% of the project expenditures for the time period claimed.

Voucher processing is closely correlated with the review of quarterly reports of training and administrative activities

Vouchers will be processed only if these reports are submitted as required.

Project budgets may not be modified without prior approval of the Office of Human Resource Development

Section 1

**DAB 1666 REPORT**

Period: 1/1/03 - 3/31/03

<b>SUMMARY OF COSTS (Total)</b>		CONTRACTOR Cornell University		CONTRACTOR NUMBER MOA 489 - (RC03 2003)		
SCHEDULE REFERENCE	BUDGET CATEGORY	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE	
A.  DIRECT COST OTHER THAN TRAINEE COST	Personnel					
	Fringe Benefits					
	Equipment Rental					
	Equipment Purchase					
	Consumable costs					
	Staff Travel					
	Consultant					
	Other					
	Direct Costs Total- other than Trainee		0	0.00	0.00	0.00
B.  TRAINEE COST	Stipends					
	Tuition and Fees					
	Travel and Per Diem					
	Total Trainee Cost		0	0.00	0.00	0.00
C.  TOTAL COST	Total Direct Cost (Total A + B)		0	0.00	0.00	0.00
	Indirect Cost Rate <u>61.50%</u>					
	Total Indirect Cost (DAB 1666 rate = 26%)		200,617	28,873.25	28,873.25	171,743.75
	Grand Total Project Cost		200,617	28,873.25	28,873.25	171,743.75

**INSTRUCTIONS**

Each voucher should be based upon 100% of the project expenditures for the time period claimed.

Voucher processing is closely correlated with the review of quarterly reports of training and administrative activities.

Vouchers will be processed only if these reports are submitted as required.

Project budgets may not be modified without prior approval of the Office of Human Resource Development.

Section 1

**DAB 1666 REPORT**

Period: 10/1/04 - 10/31/04  
(Sept & Oct)

<b>SUMMARY OF COSTS (Total)</b>		CONTRACTOR Cornell University	CONTRACTOR NUMBER MOA 489 - (RC03 2003)			
SCHEDULE REFERENCE	BUDGET CATEGORY	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE	
A DIRECT COST OTHER THAN TRAINEE COST	Personnel					
	Fringe Benefits					
	Equipment Rental					
	Equipment Purchase					
	Consumable costs					
	Staff Travel					
	Consultant					
	Other					
		Direct Costs Total- other than Trainee	0	0.00	0.00	0.00
B TRAINEE COST	Stipends					
	Tuition and Fees					
	Travel and Per Diem					
	Total Trainee Cost	0	0.00	0.00	0.00	
C TOTAL COST	Total Direct Cost (Total A + B)	0	0.00	0.00	0.00	
	Indirect Cost Rate <u>61.50%</u>					
	Total Indirect Cost (DAB 1666 rate = <u>26%</u> )	204,402	46,874.06	170,924.14	33,477.86	
	Grand Total Project Cost	204,402	46,874.06	170,924.14	33,477.86	

**INSTRUCTIONS**

Each voucher should be based upon 100% of the project expenditures for the time period claimed.

Voucher processing is closely correlated with the review of quarterly reports of training and administrative activities

Vouchers will be processed only if these reports are submitted as required

Project budgets may not be modified without prior approval of the Office of Human Resource Development.

# EXHIBIT M



March 25, 1999

New York State  
Office of  
Children & Family  
Services

Mr. Segrin Nair  
Sr. Grant and Contract Officer  
Office of Sponsored Programs  
Cornell University, 120 Day Hall  
Ithaca, New York 14853

George E. Pataki  
Governor

John A. Johnson  
Commissioner

Dear Mr. Nair:

This letter concerns the training and administrative services agreement(s) between your agency and this State agency (MOU0489). In accordance with the Federal decision discussed in my February 26, 1999 letter to you (copy enclosed) you must include a separate reporting of certain costs with each voucher submission. This new procedure is effective for all vouchers submitted on or after April 1, 1999.

Capital View Office Park

52 Washington Street  
Rensselaer, NY 12144-2796

To accommodate this separate reporting, please include an additional form 3106, labeled "DEPARTMENT APPEALS BOARD NUMBER 1666 REPORTING" with each voucher you submit. The form should include indirect costs and/or applicable direct costs as specified in the enclosed letter. Vouchers lacking this separate reporting will be rejected.

If you have any questions regarding this subject, please call Jim Spoor of my staff at (518) 486-6380. Thank you in advance for your assistance and cooperation

Sincerely,

Stephanie O'Connell  
Director  
Bureau of Financial Operations

Enclosure

cc: Mel Rosenblat  
Susan Costello  
Peter Miraglia  
Deb Hanor  
Harry Ritter  
Jim Spoor



An Equal Opportunity Employer

# EXHIBIT N

**Final Report of the Child and Family  
Services Review  
of New York State**

**January 2002**

**U.S. Department of Health and  
Human Services  
Administration for Children and  
Families**

**Region II**

- More emphasis on concurrent planning; cross training and common language training This was seen as especially needed across State agencies serving the same foster care/families/populations);
- Specific training for caseworkers on how to address the needs of older adolescents;
- Specific training for caseworkers and other staff on mental health issue because of an increase in the service population needs—both children and families.

**Item 34. The State provides training for current or prospective foster parents, adoptive parents, and staff of State licensed or approved facilities that care for children receiving foster care or adoption assistance under title IV-E that addresses the skills and knowledge base needed to carry out their duties with regard to foster and adopted children.**

X Strength      \_\_\_ Area Needing Improvement

**Basis: Statewide Assessment**

The State agency sponsors the following major training programs:

- Model Approach to Partnerships in Parenting (MAPP) Upstate: This training provides a structured format through which local districts and voluntary agencies can prepare prospective foster/adoptive families and agencies to work as team members in permanency planning. The training is provided through a series of modules designed for differing audiences and purposes.
- Training for OCFS rehabilitative services facilities, accredited by the American Correctional Association. The training includes a 5 week, 200 hour residential program for new direct care workers.
- Independent Living training and technical assistance to staff and foster parents working with youth toward self sufficiency are provided through a network of four organizations around the State (SUC Buffalo, SUNY Stony Brook, South Bronx Human Development Organization, and SUNY Albany). They maintain a resource library and database for statewide use, conduct training



conferences in NYC, Buffalo and Albany; and conduct focus groups with child welfare staff, foster parents and youth from the community, voluntary agencies, and districts.

- Some agencies supplement foster parent training through the use of a professional development plan by using experienced foster parents to mentor new foster parents; or by establishing foster parent support groups.
- Therapeutic Crisis Intervention training is provided in four components to staff of child care institutions, especially for children with special needs.

In addition, focus groups in NYC identified a need for additional training for foster parents in the areas of concurrent planning and Family-to-Family to help them be more sensitive in the ways they talk with foster children about their birth parents. Focus groups in both Upstate and NYC were in agreement that the initial MAPP training is good and helps to achieve the goal of permanency, but expressed the opinion that it does not provide adequate preparation for parenting all the different types of children in foster care. They suggested that the therapeutic training programs provide an additional 18 hours, which helps.

Focus group members provided the following suggestions for improvements to training: (1) more information about the range of emotional, behavioral, and educational problems that may be exhibited by children in care; (2) better preparation for how decisions are made about children in care by the courts and/or local districts; (3) access to follow-up training and technical assistance for foster parents dealing with a particular child's needs. With regard to availability of training, foster parents stated that training sessions are well scheduled, but sessions are not always well attended because of transportation problems and limited child care, especially for children with special needs.

Upstate voluntary agency representatives felt that the training of staff in agencies is adequate, although they noted that additional training would be helpful in the areas of ASFA requirements and time frames. OCFS IAB Specialists felt that the training provided to staff of child care institutions emphasizes restraint training, which gives the wrong message. Agencies that are setting up specialized units or cottages such as "mental health" cottages are not always providing additional specialized training. Concern was expressed that training offerings may be excellent but staff of many facilities and agencies do not attend due to staffing shortages and use of "per diem" staffing.

#### **Basis: On Site Review**

There was an overwhelming response that the State's Model Approach to Partnerships in Parenting (MAPP) training was excellent for parents. This training effort was also supported by additional offerings through the Foster Parents Association (FPA) as indicated by the FPA and other stakeholders.

Although there was general approval of the training offered to foster parents, stakeholders identified specific ways in which training could be improved. These included the following:

- Training is needed that focuses on clarity of the roles of foster parents in order that they can be more effective;
- Training sessions should be planned and provided in a manner to accommodate foster parents' schedules;
- Training needs to emphasize the role of foster parents as partners with birth parents;
- Agencies need to provide transportation to ensure that foster parents are able to attend training, especially in rural areas; and
- Training focus that is strength-based since foster parents represent multi-faceted resources in the child welfare systems.

In addition some stakeholders noted that additional training in the area of cultural competence was necessary for families to be able to communicate effectively with the population of children who are now coming into care (e.g. Haitian children). Latino foster parents did indicate that training has been conducted in Spanish to accommodate those for whom English is their second language.

#### VIII. SERVICE ARRAY

Rating	Rating of Review Team Regarding Substantial Conformity	
	Not in Substantial Conformity	Substantial Conformity
1	2X	3
		4

# **EXHIBIT O**

SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING - PLEASE DO NOT REMOVE CARBON

STATE OF NEW YORK

# STANDARD VOUCHER

8431095

Voucher No. **8431095**

1 Originating Agency <b>OCFS</b>		Orig. Agency Code <b>25000</b>		Interest Eligible (Y/N) <b>N</b>		2 P-Contract	
Payment Date (MM) (DD) (YY) <b>1 / 1 / 98</b>		OSC Use Only		Liability Date (MM) (DD) (YY) <b>09/30/98</b>			
3 Payee ID <b>15-6002250</b>		Additional		Zip Code		Payee Amount <del>107,000.00</del> <b>68,868.34</b>	
4 Payee Name (Limit to 30 spaces) <b>Cornell University</b>		IRS Code		IRS Amount			
Payee Name (Limit to 30 spaces)		Stat. Type		Statistic		Indicator-Dept. / Indicator-Statewide	
Address (Limit to 30 spaces) <b>PO Box 1354</b>		5 Ref/Inv. No. (Limit to 20 spaces) <b>323-S032 1 CPST1 98</b>					
Address (Limit to 30 spaces)		Ref/Inv. Date (MM) (DD) (YY) <b>09 / 30 / 98</b>					
City (Limit to 20 spaces) <b>Albany</b>		(Limit to 2 spaces) → State <b>NY</b>		Zip Code <b>12201</b>			
				323-8632 2250 615			

6 Purchase Order No. and Date		Description of Material/Service <small>If items are too numerous to be incorporated into the block below, use Form AC 93 and carry total forward.</small>		Quantity	Unit	Price	Amount
<b>10/26/98</b>		TOTAL EXPENDITURES					105,155.02
		LESS 25% STATE SHARE					102,168.03
		LESS 5% ADMINISTRATIVE COST					26,288.76
							(25,542.01)
							5,257.75
							(5,108.40)
							NET 71,517.62
		Gross Adjustment (3784.69)					
		STATE SHARE 946.17					
		ADMIN SHARE 189.123					
							73,608.51
							(2049.28)
							68,868.34
							73,608.51

I hereby certify that costs claimed to the State of New York for Children and Family Services on the attached voucher do not duplicate costs claimed on vouchers for any other period within the contract or any other contract this organization has with the office for the same time period.

Retroactive Adjustment for July 92  
 Voucher claim - Voucher # 8431074  
 delay due to lack of funding

Supervisor, Sponsored Funds  
*Margaret Steere*  
 Date: **10/26/98**  
 Name of Company: **Cornell University**

FOR AGENCY USE ONLY				STATE COMPTROLLER'S PRE-AUDIT					
Merchandise Received <b>10/29/98</b> Date		I certify that this voucher is correct and just, and payment is approved, and the goods or services rendered or furnished are used in the performance of the official functions and duties of this agency.		Verified		Certified For Payment of Net Amount			
Page No. <b>10</b> By		Authorized Signature		Audited		By			
Date		Title		Special Approval (as Required)		Net			
Expenditure				Liquidation					
Cost Center Code		Object	Accum		Amount	Orig Agency	PO/Contract	Line	F/P
Dept.	Cost Center Unit		Dept.	Statewide					
			<b>12X</b>						

N

VOUCHER #: 8431095PERIOD OF CLAIM: Sep-98

SUMMARY OF COSTS DSS-3106		CONTRACTOR: CORNELL UNIVERSITY CPS		CONTRACT #: C021069 CPS TERM: JAN-DEC 98	
A.	BUDGET CATEGORY	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE
	PERSONNEL	\$430,038.00	\$34,751.85	\$271,141.84	\$158,896.16
	FRINGE BENEFITS	\$146,729.00	\$10,018.97	\$87,525.11	\$59,203.89
	EQUIPMENT (RENTAL)	\$20,425.00	\$612.05	\$4,223.95	\$16,201.05
	EQUIPMENT (PURCHASED)	\$27,000.00	\$0.00	\$10,733.00	\$16,267.00
	CONSUMABLE	\$23,094.00	\$1,818.94	\$5,388.28	\$17,705.72
	STAFF TRAVEL	\$64,826.00	\$1,462.57	\$19,652.30	\$45,173.70
	CONSULTANT	\$48,100.00	\$0.00	\$0.00	\$48,100.00
	SUBCONTRACT > \$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00
	OTHER	\$229,833.00	\$7,748.15	\$68,015.18	\$161,817.82
	TOTAL DIRECT COST	\$990,045.00	\$56,412.53	\$466,679.66	\$523,365.34
B.	STIPENDS	\$0.00	\$0.00	\$0.00	\$0.00
	TUITION AND FEES	\$0.00	\$0.00	\$0.00	\$0.00
	TRAVEL & PER DIEM	\$277,935.00	\$7,823.89	\$171,378.04	\$106,556.96
	TOTAL TRAINEE COST	\$277,935.00	\$7,823.89	\$171,378.04	\$106,556.96
C.	TOTAL DIRECT COST (A&B)	\$1,267,440.00	\$64,236.42	\$638,057.70	\$629,922.30
	TOTAL INDIRECT COST RATE =	\$762,548.00	\$37,931.61	\$389,257.97	\$373,290.03
	TOTAL PROJECT COST	\$2,029,988.00	\$102,168.03	\$1,027,315.67	\$1,002,672.33

LESS STATE SHARE	\$25,542.01
LESS ADMINISTRATIVE SHARE	\$5,108.40
<b>TOTAL REIMBURSABLE THIS VOUCHER</b>	<b>\$71,517.62</b>

SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING

AC 92 (Rev. 6/94)

STATE OF NEW YORK

# STANDARD VOUCHER

Voucher No. **9442656**

1 Originating Agency <b>NY SOL FS</b>		Orig. Agency Code <b>25000</b>		Interest Eligible (Y/N) <b>N</b>		2 P-Contract	
Payment Date (MM) (DD) (YY) <b>01 01 00</b>			OSC Use Only		Liability Date (MM) (DD) (YY) <b>11/30/99</b>		
3 Payee ID <b>17663750</b>		Additional		Zip Code		Route	
Payee Name (Limit to 30 spaces) <b>Cornell University</b>		Payee Amount <b>147,486.22</b>		MIR Date (MM) (DD) (YY) <b>12 25 99</b>		IRS Code	
Payee Name (Limit to 30 spaces)		Stat. Type		Statistic		Indicator-Dept.	
Address (Limit to 30 spaces) <b>FC Box 1354</b>		5 Ref/Inv. No. (Limit to 20 spaces) <b>323-5034 02571 99</b>		Ref/Inv. Date (MM) (DD) (YY) <b>11 30 99</b>		Indicator-Statewide	
Address (Limit to 30 spaces)		City (Limit to 20 spaces) <b>Albany</b>		State (Limit to 2 spaces) → <b>NY</b>		Zip Code <b>12201</b>	
City (Limit to 20 spaces)		323 - 8534		5033		2250 615	

6 Purchase Order No. and Date	Description of Material/Service <small>If items are too numerous to be incorporated into the block below use Form AC 93 and carry total forward.</small>	Quantity	Unit	Price	Amount
	Total Expenditures:				210,694.60
	Less 25% State Share:				52,673.65
	Less 5% Admin. Cost:				10,534.73
<p>"I hereby certify that costs claimed to the State of New York Office of Children and Family Services on the attached voucher do not duplicate costs claimed on vouchers for any other period within the contract or any other contract this organization has with the Office for the same time period."</p>					
Total					147,486.22
Discount					%
Net					147,486.22

*Virginia Sierra*  
11/30/99

Virginia Sierra, Supervisor  
Sponsored Funds Accounting  
Cornell University

> 12/99  
11/30/99  
*Thomas P. Lucardi*  
MAR 13 2000

Expenditure						Liquidation					
Cost Center Code				Object	Accum		Amount	Orig. Agency	PO Contract	Line	FP
Dept.	Cost Center Unit	Var	Yr		Dept.	Statewide					
25	520000		99	55953	22X		147486.22	25000	6021217	011	P

DEPARTMENT

C021217-Cornell CPS

n

VOUCHER #: 8

PERIOD OF CLAIM: Nov-99

SUMMARY OF COSTS DSS-3106		CONTRACTOR: Cornell University CPS Training Project		CONTRACT #: C021217 TERM: Jan 99 - Dec 99	
A.	BUDGET CATEGORY	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE
	PERSONNEL	\$464,561.00	\$39,760.83	\$393,672.41	\$70,888.59
	FRINGE BENEFITS	\$133,933.00	\$12,390.16	\$117,444.39	\$16,488.61
	EQUIPMENT (RENTAL)	\$20,200.00	\$913.27	\$3,409.47	\$16,790.53
	EQUIPMENT (PURCHASED)	\$14,200.00	\$0.00	\$13,946.90	\$253.10
	CONSUMABLE	\$20,669.00	\$1,149.53	\$15,645.30	\$5,023.70
	STAFF TRAVEL	\$77,171.00	\$4,196.20	\$44,466.63	\$32,704.37
	CONSULTANT	\$41,440.00	\$16,913.04	\$34,238.70	\$7,201.30
	SUBCONTRACT > \$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00
	OTHER	\$202,426.00	\$12,769.59	\$84,148.48	\$118,277.52
	<b>TOTAL DIRECT COST</b>	<b>\$974,600.00</b>	<b>\$88,092.62</b>	<b>\$706,972.28</b>	<b>\$267,627.72</b>
B.	STIPENDS	\$0.00	\$0.00	\$0.00	\$0.00
	TUITION AND FEES	\$0.00	\$0.00	\$0.00	\$0.00
	TRAVEL & PER DIEM	\$299,768.00	\$44,378.05	\$209,174.94	\$90,593.06
	<b>TOTAL TRAINEE COST</b>	<b>\$299,768.00</b>	<b>\$44,378.05</b>	<b>\$209,174.94</b>	<b>\$90,593.06</b>
C.	<b>TOTAL DIRECT COST (A&amp;B)</b>	<b>\$1,274,368.00</b>	<b>\$132,470.67</b>	<b>\$916,147.22</b>	<b>\$358,220.78</b>
	<b>TOTAL INDIRECT COST RATE =</b>	<b>\$745,310.00</b>	<b>\$78,223.93</b>	<b>\$532,749.29</b>	<b>\$212,560.71</b>
	<b>TOTAL PROJECT COST</b>	<b>\$2,019,678.00</b>	<b>\$210,694.60</b>	<b>\$1,448,896.51</b>	<b>\$570,781.49</b>

LESS STATE SHARE \$52,673.65  
 LESS ADMINISTRATIVE SHARE \$10,534.73  
  
 TOTAL REIMBURSABLE THIS VOUCHER \$147,486.22  
 70% Reimb Rate

SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING

AC 92 (Rev. 6-94)

STATE OF NEW YORK

# STANDARD VOUCHER

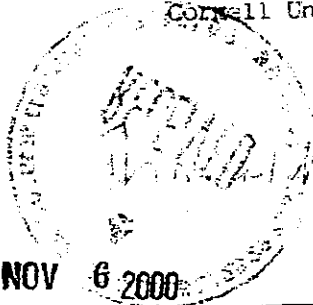
Voucher No.

0427893

1 Originating Agency <b>New York State Office of Children &amp; Family Service</b>		Orig Agency Code <b>27000</b>	Interest Eligible (Y/N) <b>N</b>	2 P-Contract	
Payment Date (MM) (DD) (YY) <b>11/30/00</b>		OSC Use Only		Liability Date (MM) (DD) (YY) <b>09/30/00</b>	
3 Payee ID <b>15-0532082</b>		Additional	Zip Code	Route	Payee Amount <b>76,339.97</b>
4 Payee Name (Limit to 30 spaces) <b>Cornell University</b>		IRS Code		MIR Date (MM) (DD) (YY) <b>10/24/00</b>	
Payee Name (Limit to 30 spaces)		Stat. Type	Statistic	Indicator-Dept.	Indicator-Statewide
Address (Limit to 30 spaces) <b>PO Box 1354</b>		5 Ref/Inv No. (Limit to 20 spaces) <b>322 8027</b>		00	
Address (Limit to 30 spaces)		Ref/Inv. Date (MM) (DD) (YY) <b>09/30/00</b>			
City (Limit to 20 spaces) <b>Albany</b>	(Limit to 2 spaces) →	State <b>NY</b>	Zip Code <b>12201</b>	<b>323-8536</b>	<b>S037 2250 615</b>

6 Purchase Order No and Date	Description of Material/Service If items are too numerous to be incorporated into the block below use Form AC 93 and carry total forward.	Quantity	Unit	Price	Amount
	Total Expenditures				109,057.10
	Less 25% State Share				27,264.28
	Less 5% Admin. Cost				5,452.86
<p>I hereby certify that costs claimed to the State of New York Office of Children &amp; Family Services on the attached voucher do not duplicate costs claimed on vouchers for any other period within the contract or any other contract this organization has with the Office for the same time period.</p>					
Total					76,339.97
Discount %					
Net					76,339.97

Virginia Sierra, Supervisor  
Sponsored Funds Accounting  
Cornell University



10/11/00  
IB  
5/11/00

Expenditure					Liquidation						
Cost Center Code				Object	Accum		Amount	Orig. Agency	PO/Contract	Line	F/P
Dept.	Cost Center Unit	Var	Yr		Dept.	Statewide					
25	536000			PSCHDZ000			76,339.97	27000	117240	107	9

AGENCY



VOUCHER #: 427893PERIOD OF CLAIM: Sep-00

SUMMARY OF COSTS OCFS-3106		CONTRACTOR: Cornell University Child Protective Services		CONTRACT #: C021840 TERM: Jan 00 - Dec 00	
A.	BUDGET CATEGORY	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE
	PERSONNEL	\$501,201.00	\$38,199.63	\$330,939.45	\$170,261.55
	FRINGE BENEFITS	\$156,877.00	\$12,571.34	\$105,028.96	\$51,848.04
	EQUIPMENT (RENTAL)	\$21,025.00	\$270.00	\$4,189.96	\$16,835.04
	EQUIPMENT (PURCHASED)	\$14,200.00	\$0.00	\$7,098.00	\$7,102.00
	CONSUMABLE	\$22,796.00	\$2,326.72	\$12,270.11	\$10,525.89
	STAFF TRAVEL	\$90,029.00	\$2,034.99	\$37,267.76	\$52,761.24
	CONSULTANT	\$32,200.00	\$0.00	\$0.00	\$32,200.00
	SUBCONTRACT > \$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00
	OTHER	\$283,087.00	\$9,194.75	\$86,950.18	\$196,136.82
	TOTAL DIRECT COST	\$1,121,415.00	\$64,597.43	\$583,744.42	\$537,670.58
B.	STIPENDS	\$0.00	\$0.00	\$0.00	\$0.00
	TUITION AND FEES	\$0.00	\$0.00	\$0.00	\$0.00
	TRAVEL & PER DIEM	\$292,620.00	\$2,721.77	\$142,242.79	\$150,377.21
	TOTAL TRAINEE COST	\$292,620.00	\$2,721.77	\$142,242.79	\$150,377.21
C.	TOTAL DIRECT COST (A&B)	\$1,414,035.00	\$67,319.20	\$725,987.21	\$688,047.79
	TOTAL INDIRECT COST RATE =	\$866,036.00	\$41,737.90	\$445,711.31	\$420,324.69
	TOTAL PROJECT COST	\$2,280,071.00	\$109,057.10	\$1,171,698.52	\$1,108,372.48

LESS STATE SHARE \$27,264.28  
 LESS ADMINISTRATIVE SHARE \$5,452.86

TOTAL REIMBURSABLE THIS VOUCHER \$76,339.97  
 75% Reimb. Rate

SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING

AC 92 (Rev. 6/94)

STATE OF NEW YORK

# STANDARD VOUCHER

Voucher No. **1426729**

1. Originating Agency <b>New York State Office of Children &amp; Family Service</b>		Orig. Agency Code <b>25000</b>	Interest Eligible (Y/N) <b>AS/MS</b>	2. P-Contract	
Payment Date (MM) (DD) (YY) <b>03/13/02</b> <del>09/27/01</del>		OSC Use Only	Liability Date <b>7/31/01</b>		
3. Payee ID <b>15-0532082</b>	Additional	Zip Code	Route	Payee Amount <b>664,302.42</b>	MIR Date (MM) (DD) (YY) <b>8/13/01</b>
4. Payee Name (Limit to 30 spaces) <b>Cornell University</b>			IRS Code	IRS Amount <b>03/06/02</b>	
Payee Name (Limit to 30 spaces)			Stat. Type <b>S</b>	Statistic	Indicator-Dept
Address (Limit to 30 spaces) <b>PO Box 1354</b>			5. Ref/Inv. No. (Limit to 20 spaces) <b>323-S021 C022508</b>		
Address (Limit to 30 spaces)			Ret/Inv. Date (MM) (DD) (YY) <b>07/31/01</b>		
City (Limit to 20 spaces) <b>Albany</b>		(Limit to 2 spaces) → State <b>NY</b>	Zip Code <b>12201</b>	<b>323-8638</b>	<b>S021 2250 615</b>

6. Purchase Order No. and Date	Description of Material/Service <small>If items are too numerous to be incorporated into the block below use Form AC 93 and carry total forward.</small>	Quantity	Unit	Price	Amount
<b>C022508</b>	Total Expenditures: <b>C022508</b>				949,003.46
	Less 25% State Share				237,250.87
	Less 5% Admin. Cost				47,450.17
<p>I hereby certify that costs claimed to the State of New York Office of Children &amp; Family Services on the attached voucher do not duplicate costs claimed on vouchers for any other period within the contract or any other contract this organization has with the Office for the same time period.</p> <p><b>MIR DATE BASED ON SFL179FR(d)</b></p>					
Total					664,302.42
Discount %					
Net					664,302.42

*Virginia Sierra*  
Virginia Sierra, Supervisor  
Sponsored Funds Accounting  
Cornell University

**8/28/01**  
**3/4/02**  
**8/1/02**  
*Jessie K...*  
*S. Platt*

Expenditure						Liquidation					
Cost Center Code				Object	Accum		Amount	Orig Agency	P.D./Contract	Line	F.P.
Dept.	Cost Center Unit	Var	Yr		Dept.	Statewide					
25	520000			01 56402 T17			664,302.42	25000	C022508	132	P

AGENCY

C022508

N

VOUCHER #:

1

PERIOD OF CLAIM: 1/01-7/31

SUMMARY OF COSTS DSS-3106		CONTRACTOR: CORNELL UNIVERSITY CPSTI		CONTRACT #: C022508 TERM: 1/1/01-12/31/01	
A.	BUDGET CATEGORY	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE
	PERSONNEL	\$657,663.00	\$236,187.28	\$236,187.28	\$421,475.72
	FRINGE BENEFITS	\$216,437.00	\$76,095.58	\$76,095.58	\$140,341.42
	EQUIPMENT (RENTAL)	\$37,875.00	\$0.00	\$0.00	\$37,875.00
	EQUIPMENT (PURCHASED)	\$14,200.00	\$6,983.00	\$6,983.00	\$7,217.00
	CONSUMABLE	\$22,979.00	\$11,494.26	\$11,494.26	\$11,484.74
	STAFF TRAVEL	\$127,886.00	\$37,425.05	\$37,425.05	\$90,460.95
	CONSULTANT	\$42,300.00	\$0.00	\$0.00	\$42,300.00
	SUBCONTRACT > \$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00
	OTHER	\$345,202.00	\$125,746.76	\$125,746.76	\$219,455.24
	TOTAL DIRECT COST	\$1,464,542.00	\$493,931.93	\$493,931.93	\$970,610.07
B.	STIPENDS	\$0.00	\$0.00	\$0.00	\$0.00
	TUITION AND FEES	\$0.00	\$0.00	\$0.00	\$0.00
	TRAVEL & PER DIEM	\$334,998.00	\$94,545.18	\$94,545.18	\$240,452.82
	TOTAL TRAINEE COST	\$334,998.00	\$94,545.18	\$94,545.18	\$240,452.82
C.	TOTAL DIRECT COST (A&B)	\$1,799,540.00	\$588,477.11	\$588,477.11	\$1,211,062.89
	TOTAL INDIRECT COST RATE =	\$1,115,780.00	\$360,526.35	\$360,526.35	\$755,253.65
	TOTAL PROJECT COST	\$2,915,320.00	\$949,003.46	\$949,003.46	\$1,966,316.54

LESS STATE SHARE \$237,250.87

LESS ADMINISTRATIVE SHARE \$47,450.17

TOTAL REIMBURSABLE THIS VOUCHER \$664,302.42

SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING

AC 92 (Rev 6/94)

STATE OF NEW YORK

STANDARD VOUCHER

04216

OSC #1020 2/25/03

Voucher No. 442,424.79

1 Originating Agency NYS Office of Children and Family Services		Orig. Agency Code 2500		Interest Eligible (Y/N) N		2 P-Contract	
Payment Date (MM) (DD) (YY) 02/07/03		OSC Use Only		Liability Date (MM) (DD) (YY) 11/30/02			
3 Payee ID 15-6002250		Additional		Zip Code		Route	
Payee Name (Limit to 30 spaces) Cornell University Statutory		IRS Code		IRS Amount		MIR Date (MM) (DD) (YY) 11/08/03	
Payee Name (Limit to 30 spaces) Div. of Financial Affairs		Stat Type		Statistic		Indicator-Dept. Indicator-Statewide	
Address (Limit to 30 spaces) 341 Pine Tree Rd.		5 Ref/Inv. No (Limit to 20 spaces) 323-S011 R003 C023013					
Address (Limit to 30 spaces) P.O. Box 1354		Ref/Inv. Date (MM) (DD) (YY) 11/30/02					
City (Limit to 20 spaces) Ithaca ALBANY		(Limit to 2 spaces) →		State NY		Zip Code 14850-2820	
				323-8630		2250 615	

6 Purchase Order No. and Date	Description of Material/Service If items are too numerous to be incorporated into the block below use Form AC 93 and carry total forward.	Quantity	Unit	Price	Amount
C023013	Total Expenditures				63,463.99
	Less: 25% State Share				15,866.00
	Less: 5% Admin. Cost				3,173.20
<p>I hereby certify that costs claimed to the NYS Office of Children and Family Services on the attached voucher do not duplicate costs claimed on vouchers for any other period within the contract or for any other contract this organization has with the Office for the same time period.</p>					
Total					44,424.79
Discount %					
Net					44,424.79

*Virginia Sierra*

Virginia Sierra, Supervisor  
Sponsored Funds Accounting  
Cornell University

1/8/03  
NB  
7/8/03

*Joseph W. ...*  
2/12/03

Expenditure							Liquidation				
Cost Center Code				Object	Accum		Amount	Orig. Agency	PO/Contract	Line	F/P
Dept.	Cost Center Unit	Var	Yr		Dept.	Statewide					
25	220070			56402 TMS			+ 3277.62	25000	C023013	011	P
25	320010			01 56402 TMS			+ 7409.63	25000	C023013	012	P

DEPARTMENT

VOUCHER #: 2427518  
 OSC PAYMENT DATE: \_\_\_\_\_ OSC JV # \_\_\_\_\_  
 PERIOD OF CLAIM: Nov-02

SUMMARY OF COSTS DSS-3106		CONTRACTOR: CORNELL UNIV. RC03		CONTRACT #: C023013  TERM: 1/1/02-12/31/02	
A.	BUDGET CATEGORY	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE
	PERSONNEL	\$231,613.00	\$12,836.01	\$231,436.45	\$176.55
	FRINGE BENEFITS	\$77,705.00	\$4,677.43	\$75,775.80	\$1,929.20
	EQUIPMENT (RENTAL)	\$15,600.00	\$0.00	\$10,653.86	\$4,946.14
	EQUIPMENT (PURCHASED)	\$5,740.00	\$595.00	\$2,027.50	\$3,712.50
	CONSUMABLE	\$7,354.00	\$892.56	\$5,423.83	\$1,930.17
	STAFF TRAVEL	\$51,407.00	\$4,573.08	\$56,547.70	(\$5,140.70)
	CONSULTANT	\$8,000.00	\$0.00	\$0.00	\$8,000.00
	SUBCONTRACT > \$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00
	OTHER	\$120,949.00	\$9,090.89	\$109,635.57	\$11,313.43
	<b>TOTAL DIRECT COST</b>	<b>\$518,368.00</b>	<b>\$32,664.97</b>	<b>\$491,500.71</b>	<b>\$26,867.29</b>
B.	STIPENDS	\$0.00	\$0.00	\$0.00	\$0.00
	TUITION AND FEES	\$0.00	\$0.00	\$0.00	\$0.00
	TRAVEL & PER DIEM	\$102,248.00	\$6,631.62	\$27,042.39	\$75,205.61
	<b>TOTAL TRAINEE COST</b>	<b>\$102,248.00</b>	<b>\$6,631.62</b>	<b>\$27,042.39</b>	<b>\$75,205.61</b>
C.	<b>TOTAL DIRECT COST (A&amp;B)</b>	<b>\$620,616.00</b>	<b>\$39,296.59</b>	<b>\$518,543.10</b>	<b>\$102,072.90</b>
	<b>TOTAL INDIRECT COST RATE =</b>	<b>\$379,378.00</b>	<b>\$24,167.40</b>	<b>\$318,023.02</b>	<b>\$61,354.98</b>
	<b>TOTAL PROJECT COST</b>	<b>\$999,994.00</b>	<b>\$63,463.99</b>	<b>\$836,566.12</b>	<b>\$163,427.88</b>

LESS STATE SHARE \$15,866.00  
 LESS ADMINISTRATIVE SHARE \$3,173.20  
 TOTAL REIMBURSABLE THIS VOUCHER \$44,424.79

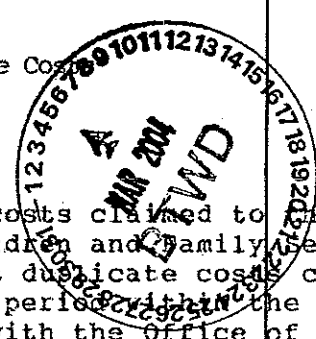
STATE OF NEW YORK

# STANDARD VOUCHER

Voucher No: 321808  
 11 Not Final

*OSCP No 604/04*

1 Originating Agency <b>Office of Children and Family Services</b>		Orig Agency Code <b>25000</b>	Interest Eligible (Y/N) <b>N</b>	2 P-Contract	
Payment Date (MM) (DD) (YY) <b>03/31/04</b>		OSC Use Only		Liability Date (MM) (DD) (YY) <b>12/31/03</b>	
3 Payee ID <b>15-6002250</b>	Additional	Zip Code	Route	Payee Amount <b>92246.27</b>	MIR Date (MM) (DD) (YY) <b>03/05/04</b>
4 Payee Name (Limit to 30 spaces) <b>Cornell University - Statutory</b>			IRS Code	IRS Amount	
Payee Name (Limit to 30 spaces)			Stat. Type	Statistic	Indicator-Dept. / Indicator-Statewide
Address (Limit to 30 spaces) <b>Division of Financial Affairs</b>			5 Ref/Inv. No. (Limit to 20 spaces) <b>323-S012 C023295</b>		
Address (Limit to 30 spaces) <b>341 Pine Tree Rd</b>			Ref/Inv. Date (MM) (DD) (YY) <b>03/02/04</b>		
City (Limit to 20 spaces) <b>Ithaca</b>		(Limit to 2 spaces) →	State <b>NY</b>	Zip Code <b>14850-2820</b>	<b>323-8635 2230 615</b>

6 Purchase Order No and Date	Description of Material/Service If items are too numerous to be incorporated into the block below use Form AC 93 and carry total forward.	Quantity	Unit	Price	Amount
C023295	Total Expenditures				131,780.38
	Less: 25% State Share				-32,945.10
	Less: 5% Administrative Cost				-6,589.02
 <p>I hereby certify that costs claimed to the State of New York Office of Children and Family Services on the attached voucher do not duplicate costs claimed on vouchers for any other period within the contract this organization has with the office of the same time period.</p>					
Total					92,246.27
Discount %					
Net					92,246.27

*Virginia Sierra*  
 03/02/04

Virginia Sierra, Supervisor  
 Sponsored Funds Accounting  
 Cornell University

*3/5/04*  
*3/24/04*  
**CONTRACT MANAGEMENT SPECIALIST**

Expenditure					Liquidation						
Cost Center Code				Object	Accum		Amount	Orig Agency	PO/Contract	Line	F/P
Dept.	Cost Center Unit	Var	Yr		Dept.	Statewide					
25	320010			03 56402 TX2			+ 604577	25000	C023295	001	P
25	320036			03 56402 TX2			+ 1118193	25000	C023295	002	P
25	520000			03 56402 TX2			+ 7501857	25000	C023295	003	P

n

VOUCHER #: 3421808  
 OSC PAYMENT DATE \_\_\_\_\_ OSC JV # \_\_\_\_\_  
 PERIOD OF CLAIM: Dec-03

SUMMARY OF COSTS DSS-3106		CONTRACTOR: CORNELL UNIV RC03		CONTRACT #: C023295 TERM: 1/1/03-12/31/03	
A.	BUDGET CATEGORY	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE
	PERSONNEL	\$295,295.00	\$19,736.78	\$286,220.94	\$9,074.06
	FRINGE BENEFITS	\$107,605.00	\$7,456.35	\$107,179.54	\$425.46
	EQUIPMENT (RENTAL)	\$16,500.00	\$910.00	\$10,525.00	\$5,975.00
	EQUIPMENT (PURCHASED)	\$5,900.00	\$0.00	\$0.00	\$5,900.00
	CONSUMABLE	\$10,010.00	\$0.00	\$9,588.84	\$421.16
	STAFF TRAVEL	\$107,138.00	\$4,683.15	\$77,053.54	\$30,084.46
	CONSULTANT	\$35,000.00	\$0.00	\$7,102.69	\$27,897.31
	SUBCONTRACT > \$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00
	OTHER	\$125,771.00	\$46,320.67	\$133,965.19	(\$8,194.19)
	<b>TOTAL DIRECT COST</b>	<b>\$703,219.00</b>	<b>\$79,106.95</b>	<b>\$631,635.74</b>	<b>\$71,583.26</b>
B.	STIPENDS	\$0.00	\$0.00	\$0.00	\$0.00
	TUITION AND FEES	\$0.00	\$0.00	\$0.00	\$0.00
	TRAVEL & PER DIEM	\$71,783.00	\$8,009.88	\$72,011.30	(\$228.30)
	<b>TOTAL TRAINEE COST</b>	<b>\$71,783.00</b>	<b>\$8,009.88</b>	<b>\$72,011.30</b>	<b>(\$228.30)</b>
C.	<b>TOTAL DIRECT COST (A&amp;B)</b>	<b>\$775,002.00</b>	<b>\$87,116.83</b>	<b>\$703,647.04</b>	<b>\$71,354.96</b>
	<b>TOTAL INDIRECT COST RATE =</b>	<b>\$474,998.00</b>	<b>\$44,663.55</b>	<b>\$423,829.63</b>	<b>\$51,168.37</b>
	<b>TOTAL PROJECT COST</b>	<b>\$1,250,000.00</b>	<b>\$131,780.38</b>	<b>\$1,127,476.67</b>	<b>\$122,523.33</b>

LESS STATE SHARE \$32,945.10  
 LESS ADMINISTRATIVE SHARE \$6,589.02  
 TOTAL REIMBURSABLE THIS VOUCHER \$92,246.27

SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING **RC03**

**5417560**

STATE OF NEW YORK

# STANDARD VOUCHER

Voucher No. **5421007**  
 Final  
 P-Contract **C023766**

1 Originating Agency <b>NYS Children and Family Services</b>		Orig. Agency Code <b>25000</b>		Interest Eligible (Y/N) <b>N</b>		2 P-Contract <b>C023766</b>	
Payment Date (MM) (DD) (YY) <b>06/10/05</b>		OSC Use Only		Liability Date (MM) (DD) (YY) <b>12/31/04</b>			
3 Payee ID <b>15-0532082</b>		Additional		Zip Code		Route	
Payee Name (Limit to 30 spaces) <b>Cornell University Statutory</b>		IRS Code		IRS Amount <b>\$72,464.93</b>		MIR Date (MM) (DD) (YY) <b>05/12/05</b>	
Payee Name (Limit to 30 spaces) <b>Division of Financial Affairs</b>		Stat. Type		Statistic		Indicator-Dept	
Address (Limit to 30 spaces) <b>341 Pine Tree Rd</b>		5 Ref/Inv. No. (Limit to 20 spaces) <b>C023766 323-8636</b>		7 Final			
Address (Limit to 30 spaces)		Ref/Inv. Date (MM) (DD) (YY) <b>05/03/05</b>					
City (Limit to 20 spaces) <b>Ithaca</b>		(Limit to 2 spaces) → State <b>NY</b>		Zip Code <b>14850-2820</b>		323-8636-S013	

6 Purchase Order No and Date	Description of Material/Service If items are too numerous to be incorporated into the block below use Form AC 93 and carry total forward.	Quantity	Unit	Price	Amount
C023766 12/1/04 to 12/31/04	Total Expenditures Less: 25% Cost Share Less: 5% Administrative Costs				103,521.33 (25,880.33) (5,176.07)
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">                 INVOICE                  OCS                  CONTRACT BUREAU                  2005 MAY 13 AM 8:04             </p> <p>                 I hereby certify that costs claimed to the State of New York Office of Children and Family Services on the attached voucher do not duplicate costs claimed on vouchers for any other period within the contract this organization has with the Office of the same time period.             </p>					

7 Payee Certification: I certify that the above bill is just, true and correct; that no part thereof has been paid except as stated and that the balance is actually due and owing, and that taxes from which the State is exempt are excluded		Total	<b>72,464.93</b>
→ <u>Virginia Sierra</u> Payee's Signature in Ink <b>MAY 03 2005</b> Date		Discount %	
Virginia Sierra, Supervisor Sponsored Funds Accounting Cornell University Name of Company		Net	<b>72,464.93</b>

FOR AGENCY USE ONLY				STATE COMPTROLLER'S PRE-AUDIT			
Merchandise Received <b>KB</b> Date <b>5/12/05</b>		I certify that this voucher is correct and just, and payment is approved, and the goods or services rendered or furnished are for use in the performance of the official functions and duties of this agency		Certified For Payment of Net Amount		Verified	
Page No. <b>5/1/05</b> By		Authorized Signature		Audited		Special Approval (as Required)	
Date		Title		By			

Expenditure						Liquidation				
Dept.	Cost Center Code	Var	Yr	Object	Accum	Amount	Orig Agency	PO/Contract	Line	F/P
					Dept. Statewide					
25	320010			04 5640	X63	5798.88	25000	C023766	001	P
25	520000			04 5640	X63	64767.67	25000	C023766	002	P
25	520084			02 5640	X63	2598.38	25000	C023766	005	P

OSC

Check if Continuation form is attached



PER APPROVED BUDGET MODIFICATION DATED 3/22/05

n

OSC PAYMENT DATE

VOUCHER #: 5421007

OSC JV #

PERIOD OF CLAIM: Dec-04


SUMMARY OF COSTS DSS-3106		CONTRACTOR CORNELL UNIV. RC03		CONTRACT #: C023766 TERM: 1/01/04-12/31/04	
A.	BUDGET CATEGORY	APPROVED BUDGET	COSTS THIS PERIOD	COSTS TO DATE	BALANCE
	PERSONNEL	\$377,730.00	\$33,523.84	\$379,288.92	(\$1,558.92)
	FRINGE BENEFITS	\$152,390.00	\$12,965.91	\$152,718.35	(\$328.35)
	EQUIPMENT (RENTAL)	\$12,891.00	\$3,330.00	\$8,861.50	\$4,029.50
	EQUIPMENT (PURCHASED)	\$0.00	\$0.00	\$4,030.00	(\$4,030.00)
	CONSUMABLE	\$11,430.00	\$3,477.60	\$11,430.60	(\$0.60)
	STAFF TRAVEL	\$60,973.00	\$3,505.80	\$60,972.69	\$0.31
	CONSULTANT	\$17,086.00	\$0.00	\$17,085.75	\$0.25
	SUBCONTRACT > \$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00
	OTHER	\$81,966.00	-\$20,973.69	\$79,819.72	\$2,146.28
	<b>TOTAL DIRECT COST</b>	<b>\$714,466.00</b>	<b>\$35,829.46</b>	<b>\$714,207.53</b>	<b>\$258.47</b>
B.	STIPENDS	\$0.00	\$0.00	\$0.00	\$0.00
	TUITION AND FEES	\$0.00	\$0.00	\$0.00	\$0.00
	TRAVEL & PER DIEM	\$71,698.00	\$29,278.30	\$71,698.58	(\$0.58)
	<b>TOTAL TRAINEE COST</b>	<b>\$71,698.00</b>	<b>\$29,278.30</b>	<b>\$71,698.58</b>	<b>(\$0.58)</b>
C.	<b>TOTAL DIRECT COST (A&amp;B)</b>	<b>\$786,164.00</b>	<b>\$65,107.76</b>	<b>\$785,906.11</b>	<b>\$257.89</b>
	<b>TOTAL INDIRECT COST RATE =</b>	<b>\$463,836.00</b>	<b>\$38,413.58</b>	<b>\$463,684.60</b>	<b>\$151.40</b>
	<b>TOTAL PROJECT COST</b>	<b>\$1,250,000.00</b>	<b>\$103,521.34</b>	<b>\$1,249,590.71</b>	<b>\$409.29</b>

LESS STATE SHARE \$25,880.33  
 LESS ADMINISTRATIVE SHARE \$5,176.07  
 TOTAL REIMBURSABLE THIS VOUCHER \$72,464.94

# **EXHIBIT P**

**CERTIFICATION**

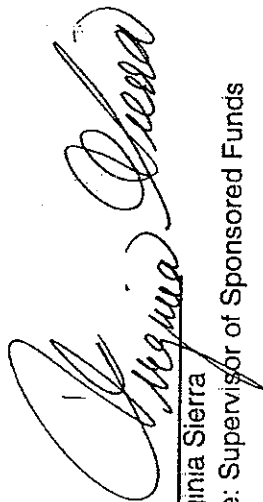
The undersigned certifies that all costs billed and reported are in accordance with all federal and state laws and regulations as applicable, including, but not limited to A-133, A-21, and A-110, state finance law, etc.

  
Virginia Sierra  
Title: Supervisor of Sponsored Funds

contract number: C021840  
323-8636

**CERTIFICATION**

The undersigned certifies that all costs billed and reported are in accordance with all federal and state laws and regulations as applicable, including, but not limited to A-133 A-21, and A-110, state finance law, etc.

  
Virginia Sierra  
Title: Supervisor of Sponsored Funds

contract number: C022508  
323-8638

**CERTIFICATION**

The undersigned certifies that all costs billed and reported are in accordance with all federal and state laws and regulations as applicable, including, but not limited to A-133 A-21, and A-110, state finance law, etc.

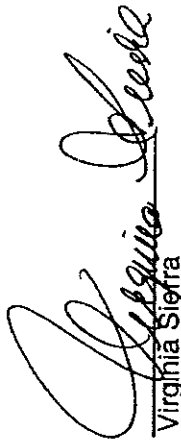
  
Virginia Sierra

Title: Supervisor of Sponsored Funds

contract number: C023013  
323-8630

**CERTIFICATION**

The undersigned certifies that all costs billed and reported are in accordance with all federal and state laws and regulations as applicable, including, but not limited to A-133, A-21, and A-110, state finance law, etc.

  
Virginia Sierra

Title: Supervisor of Sponsored Funds

contract number: C023295  
323-8635

**CERTIFICATION**

The undersigned certifies that all costs billed and reported are in accordance with all federal and state laws and regulations as applicable, including, but not limited to A-133 A-21, and A-110, state finance law, etc.



Virginia Sierra

Title: Supervisor of Sponsored Funds

contract number: C023295  
323-8635

# **EXHIBIT Q**



## Appendix A3

Rev.04/28/03

### Federal Assurances and Certifications

Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Office of Family and Children Services.

As the duly authorized representative of the applicant, I assert that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Executive Order Number 11246 as amended by E.O. 11375 relating to Equal Employment Opportunity, which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
13. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
14. This contract is funded in whole or part with federal funds under the CDFA No(s) shown on the first page of Appendix C or Appendix X for renewals. OCFS is a pass-through entity of these federal funds. As a recipient of these federal funds, the Contractor may be determined, as shown on the first page of Appendix C or Appendix X for renewals, to be a sub-recipient of federal assistance. Sub-

recipients of federal funds have the responsibility of reporting to OCFS in addition to the sub-recipient's responsibility to file reports with the federal clearinghouse designated by Office of Management and Budget (OMB). If this contract will require the Contractor to expend \$300,000 or more of federal funds from this contract or in total with other contracts or grants of federal funds or assistance in the Contractor's fiscal year, regardless of the source of the funding, the Contractor is required to comply with the terms and provisions of the OMB Circular A-133. The Contractor will notify OCFS if it reasonably expects to expend the sum of \$300,000 of federally derived funds, in its fiscal year, as soon as it has notice of awards, grants or contracts totaling \$300,000 in federal funds but in no event later than the close of the calendar year. The Contractor will have an audit performed pursuant to the requirements of OMB Circular A-133 and provide OCFS with the required reports within 30 days of the Contractor's receipt of the independent audit report or within 9 months after the close of the Contractor's fiscal year, whichever event is sooner.

15. Certifies that Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The contractor/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions of children's services and all subgrantees shall certify accordingly.

16A. 1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below. 2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. 3. For grantees other than individuals, Alternate I applies. For grantees who are individuals, Alternate II applies. 5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements. 6. Workplace identifications must include the actual address of buildings (or parts of buildings) or sites where work under the grant takes place. Categorical descriptions may be used (e.g. all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). 7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five). 8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules: Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15); Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes; Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance; Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g. volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

16B. Alternate I (Grantees Other Than Individuals). 1. The grantee certifies that the applicant will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (b) Establishing an ongoing drug-free awareness program to inform employees about: (1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above; (d) Notifying the employee in the statement required by paragraph (a) above, that, as a condition of employment under the grant, the employee will-(1) Abide by the terms of the statement; and (2) Notify the employer in writing of his or her conviction for violation of a criminal drug status occurring in the workplace no later than five calendar days after such conviction; (e) Notify the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant; (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or

rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f). For purposes of paragraph (e) regarding agency notification of criminal drug convictions, the DHHS has designated the following central point for receipt of such notices: Division of Grants Policy and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C., 20201

16C. Alternate II (Grantees Who Are Individuals). 1. The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; 2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

17. Certifies that Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (non-appropriated) funds. The requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93). The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.) (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

18A1. Agrees that, a) By signing and submitting this proposal, the prospective primary applicant is providing the certification set out below. b) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. c) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. d) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. e) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Office of Children and Family Services for assistance in obtaining a copy of those regulations. f) The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. g) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. h) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. i) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. j) Except for transactions authorized under

paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

18A2. (1) Certifies to the best of its knowledge and belief, that the applicant and its principals: a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency; b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 19A. 2. (1) b) of this certification; and d) Have not within a three-year period preceding this application/proposal had on or more public transactions (Federal, State, or local) terminated for cause or default. (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

18B.1 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions Instructions for Certification. a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below. b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances. d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals.

Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. i) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

18B.2 a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

**Appendix A3**

Rev. 04/28/03

**Federal Assurances and Certifications**

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL:

*Gregory L. Jones*

12/18/03

TITLE:

*Sr. Grant & Contract Officer*

APPLICANT ORGANIZATION:

*Cornell University*

# **EXHIBIT R**



U.S. Department of Health &amp; Human Services

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## Instructions For Completing FORM ACF-IV-E-1 TITLE IV-E FOSTER CARE AND ADOPTION ASSISTANCE FINANCIAL REPORT STATE QUARTERLY REPORT OF EXPENDITURES AND ESTIMATES

All States are required to complete and submit this report in accordance with these instructions on behalf of the State agency administering the Foster Care and Adoption Assistance Programs under title IV-E of the Social Security Act. The information collected is used to award funds, make budget estimates and reports to Congress on Federal fund requirements. All items of PARTS 1 and 2 must be completed and submitted quarterly by January 30, April 30, July 30 and October 30.

Policy regarding claims for expenditures will be interpreted under statute, regulations, action transmittals and policy issuances. These forms will not be regarded as superseding the interpretation of whether claims are allowable or unallowable under those documents.

Distribution: Mail the original (with original signatures) to:

Administration on Children, Youth and Families  
Office of Management Services  
330 C Street, S.W.  
Washington, D.C. 20447

Send one copy of the [form](#) (Excel 43 KB) to the appropriate Regional official.

Round all entries to the nearest dollar. Enter State name and complete the information at the top of each Part. Include the appropriate Federal Medical Assistance Percentage (FMAP) rate as published in the Federal Register.

### General Instructions for PART 1

All amounts reported in Columns (a), (b), (c), and (d) must be for actual expenditures made under the State's approved IV-E plan and in accordance with all applicable statutes and regulations. The expenditures must be for amounts for payments made on behalf of children determined eligible for title IV-E, or for administration, training and systems costs, claimed in accordance with methodologies in an approved or pending cost allocation plan, negotiated indirect cost rate or other required submission. All amounts reported in Columns (e) and (f) are for estimates of expenditures to be made during the time period indicated based on the best information available to the State.

Under Section 1130 of the Social Security Act, DHHS can authorize demonstration projects that involve the waiver of certain requirements of title IV-E. Within the Form ACF-IV-E-1 there are entries for authorized demonstration projects. Only costs that are for authorized demonstration projects should be reported.

Columns (a) & (b): CURRENT QUARTER EXPENDITURES. Include on Part 1 all amounts paid by the State or local government during the quarter indicated, even if the payment is applicable to a previous quarter, per the Federal regulations at 45 CFR 95.4 and 95.13(a), (b) and (d). Amounts which were paid prior to the current quarter and not previously claimed must be included in Columns (c) & (d), PRIOR QUARTER ADJUSTMENTS.

Columns (c) & (d): PRIOR QUARTER ADJUSTMENTS. This is the net amount combining individual increasing and decreasing adjustments for prior quarters. Increasing adjustments include any expenditures made by the State or local government during a prior quarter which were not reported on a previous submission of this report. Decreasing adjustments include any expenditures previously reported which are now being reduced. Any adjustment reported in this column must be detailed and separated into the increasing and decreasing components by completing PART 2, PRIOR QUARTER ADJUSTMENTS. Claims submitted with expenditures for prior quarter adjustments are subject to 45 CFR Subpart A.

Increasing adjustments must be claimed within two years

Column (e) & (f): NEXT QUARTER ESTIMATE. Include anticipated costs for the quarter indicated as NEXT QUARTER ENDING. The Total Federal share constitutes the State's request for Federal funds for title IV-E-Foster Care and Adoption Assistance

Previously, separate data reporting was required for non-voluntary and voluntary foster care based on legislative mandates. Due to changes in legislation there is no longer a need to collect information separately. Therefore, non-voluntary and voluntary reporting has been combined into one category for foster care

## Detailed Instructions for PART 1

### FOSTER CARE

**Line 1:** Enter the amount of maintenance assistance payments subject to Federal matching that are allowable under Federal law, regulation and policy for Foster Care.

**Line 2:** Enter the Federal share of Child Support Collections collected during the quarter regardless of the quarter to which they apply. The amount in Column (b) must agree with the amount reported on Line 10, Column (b) for Foster Care on Form OCSE-34A for the same quarter.

**Line 3:** Enter the net amount of assistance payments Line 1 minus Line 2.

**Line 4:** Enter the average monthly number of children for whom the payments indicated on Line 1 were or will be made

**Lines 5a-5e:** Enter the amount for State and local administration expenditures, including State and local staff activities or activities contracted to private non-profit agencies. Enter amounts for the activity under the most specific of the sub-categories listed here. Refer to ACYF-PA-87-05 and 45 CFR 1356.60 for allowability of these costs

**Line 5a:** Enter the amount expended for children in Foster Care for the development, review or revision of case plans or the supervision or management of cases, including preparation for and participation in judicial proceedings and child placement

**Line 5b:** Enter the amount for pre-placement activities applicable to individual children clearly at risk of placement in title IV-E-Foster Care.

**Line 5c:** Enter the amount directly related only to eligibility determination activities for costs involved in the actual verification and documentation of eligibility, as defined in ACYF-PA-87-05.

**Line 5d:** Enter the amount of Statewide Automated Child Welfare Information System (SACWIS) operation costs. Refer to ACF Action Transmittal ACF-OSS-05.

**Line 5e:** Include the total computable amount for all other activities, such as rate setting, the appropriate share of automated data processing activities, recruitment and licensing of homes not specific to a child, the issuance of checks and other activities not listed in Lines 5(a) through 5(d)

**Line 5f:** Enter the total amount for State and Local Administration. The sum of Line 5a through Line 5e.

**Line 6:** Enter the amount for all SACWIS development costs. Refer to ACF Action Transmittal ACF-OSS-05

**Line 7:** Enter the total amount for State and local training eligible for 75% Federal financial participation

**Line 8:** Enter the amount for approved demonstration projects for Foster Care authorized under Section 1130 of the Social Security Act, excluding expenditures for Control/Comparison groups. From Part 4, Line 7(f).

**Line 9:** Enter the total amount for each column as indicated in the footnote.

**Line 10:** Enter the State share of the estimate, Line 9(e) minus 9(f).

### ADOPTION ASSISTANCE

**Line 1:** Enter the total amount for assistance payments subject to Federal matching that are allowable under Federal law, regulation and policy for Adoption Assistance

**Line 2:** Enter the average monthly number of children for whom the payments indicated on Line 1 were made. Do not enter children who are receiving Medical-only benefits.

**Line 3:** Enter the amount for State and local administration

**Line 4:** Enter the amount for State and local training eligible for 75% Federal financial participation.

**Line 5:** Enter the amount for approved demonstration projects for Adoption Assistance authorized under Section 1130 of the

Social Security Act, excluding expenditures for Control/Comparison groups from Part 4, Line 7(f).

**Line 6.** Enter the total amount for each column

**Line 7.** Enter the State share of the estimate, Line 6(e) minus 6(f).

### SIGNATURE OF AUTHORIZING OFFICIAL

The form must be signed by an authorized official of the State agency certifying that: (a), the information provided on all PARTS of this form included in this submission and on all accompanying documents is accurate and true to the best of the official's knowledge and belief, and (b), the amount shown as the State share of expenditures on Line 10 for Foster Care and Line 7 for Adoption Assistance will be available to meet the non-Federal share of expenditures for the estimate quarter as prescribed by law

### Increases or Decreases Greater than Five Percent

On an attached page, States must submit a detailed explanation of any increase or decrease greater than five percent for any data element of Part 1 compared to the same element for the previous quarter. The explanation should include but is not limited to details relating to changes in number of children or type of placement, number of staff or administrative activity, or number of trainees or type of training

### General Instructions for PART 2: PRIOR QUARTER ADJUSTMENTS

Complete and attach as many PRIOR QUARTER ADJUSTMENT pages as necessary to report all prior quarter adjustments using the appropriate page for Foster Care or Adoption Assistance. Report all entries by funding activity (payments, administration, training, etc.). Report only one quarter per line and report separately any entry that refers to a separate line on PART 1, i.e., payments and administrative claims for the same quarter must be reported on separate lines of the adjustment page.

The net of the individual increasing and decreasing adjustments for each activity shall be entered as the net adjustments reported in Columns (c) and (d) on PART 1 for the appropriate line.

Enter the name of the State, the Current Quarter Ended, as entered on PART 1 and the page number if more than one adjustment page is submitted.

### Detailed Instructions for PART 2: PRIOR QUARTER ADJUSTMENTS

**Column (a).** Enter the funding activity for the line of Column (c) and (d) of PART 1 to which the adjustment applies. A list of funding activities is shown at the bottom of PART 2 for Foster Care and Adoption Assistance.

**Column (b).** Enter the month and year of the end of the quarter to which the adjustment applies.

**Column (c).** Enter the total computable amount of the adjustment, regardless of the category of the adjustment.

**Column (d).** Enter the Federal share of the amount in Column (c) using the applicable FMAP rate for the fiscal year to which the adjustment applies, 50% for administration, 75% for training or the appropriate 75% or 50% rate for SACWIS costs.

**Column (e).** Enter the Federal audit control number, if available, or other comments as applicable. The audit control number greatly facilitates closing audits.

If the adjustment is for payments, include in Column (e), the average monthly number of children who have not been previously claimed for the quarter of the adjustment.

### General Instructions for PART 3

**Requirement, Due Dates:** State agencies administering the Foster Care and Adoption Assistance Programs under title IV-E of the Social Security Act are required to complete and submit this PART of Form ACF-IV-E-1 semiannually by April 30 and October 30. Each report shall contain actual data or projections, as appropriate, for three consecutive Federal fiscal years. The first year of this three-year period will match the fiscal year being reported as "current quarter" in PART 1.; **the first year of this three-year period will be the same as the calendar year in which the report is being submitted.** For example, the reports submitted by April 30 and October 30, 2000 will contain budget projections for fiscal years 2000, 2001, and 2002. All references to "fiscal year" pertain to the Federal fiscal year of October 1 through September 30.

All entries INCLUDING LINE 2 should be in **total computable** amounts.

All of the Line headings on this PART (except Line 2) are the same as the lines for expenditures in PART 1.

Include in Lines 1-7 of Section A and Lines 1-4 of Section B the title IV-E-Foster Care or Adoption Assistance expenditures projected for Demonstration Projects from control/comparison groups used for determining the Cost Neutrality Limit.



Include in Line 8 of Section A and Line 5 of Section B the title IV-E-Foster Care expenditures, actual or projected, for the Demonstration Projects.

### Detailed Instructions for PART 3

#### FOSTER CARE

**Line 1:** Enter the amount of maintenance assistance payments subject to Federal matching that are allowable under Federal law, regulation and policy for Foster Care

**Line 2:** Enter the TOTAL COMPUTABLE Child Support Collections actually or estimated to be collected during the fiscal year regardless of the quarter and year to which they apply. The amounts must agree with the amounts forecast for Foster Care on Line 11 of PART 3 on Form OCSE-396A

**Line 3:** Enter the net amount of assistance payments. Line 1 minus Line 2.

**Line 4:** Enter the average monthly number of children for whom the payments indicated on Line 1 were or will be made

**Lines 5a-5e:** Enter the amount for State and local administration expenditures, including State and local staff activities or activities contracted to private non-profit agencies. Enter amounts for the activity under the most specific of the sub-categories listed here. Refer to 45 CFR 1356.60 and ACYF-PA-87-05 for allowability of these costs

**Line 5a:** Enter the amount expended for children in foster care for the development, review or revision of case plans or the supervision or management of cases, including preparation for and participation in judicial proceedings and child placement.

**Line 5b:** Enter the amount for pre-placement activities applicable to individual children clearly at risk of placement in title IV-E-Foster Care, as defined in ACYF-PA-87-05

**Line 5c:** Enter the amount directly related only to eligibility determination activities for costs involved in the actual verification and documentation of eligibility, as defined in ACYF-PA-87-05

**Line 5d:** Enter the amount of operation costs for Statewide Automated Child Welfare Information System (SACWIS).

**Line 5e:** Enter the total computable amount for all other activities, such as rate setting, the appropriate share of automated data processing activities, recruitment and licensing of homes not specific to a child, the issuance of checks and other activities not listed in Lines 5(a) through 5(d) or in Line 6.

**Line 5f:** Enter the total amount for State and local Administration. This is the sum of Line 5a through Line 5e.

**Line 6:** Enter the amount for all SACWIS development costs

**Line 7:** Enter the total amount for State and local training

**Line 8:** Enter the total amount for approved demonstration projects for Foster Care authorized under Section 1130 of the Social Security Act

#### ADOPTION ASSISTANCE

**Line 1:** Enter the total amount for assistance payments subject to Federal matching that are allowable under Federal law, regulation and policy for Adoption Assistance

**Line 2:** Enter the average monthly number of children for whom the payments indicated on Line 1 were made. Do not enter children who are receiving Medical-only benefits.

**Line 3:** Enter the amount for State and local administration

**Line 4:** Enter the amount for State and local training

**Line 5:** Enter the total amount for approved demonstration projects for Adoption Assistance authorized under Section 1130 of the Social Security Act

### Instructions for completion of Form ACF-IV-E-1 Part 4 TITLE IV-E FOSTER CARE AND ADOPTION ASSISTANCE DEMONSTRATION PROJECTS

#### General

This Part should be completed quarterly by any State with an approved title IV-E waiver demonstration. All entries should be made in accordance with the State's approved waiver demonstration terms and conditions. Particular attention should be given to sections B and C, which will require development and maintenance of State schedules to accumulate needed cost

data. In this context, states may wish to consider the need to develop specific demonstration fiscal operational procedures. These procedures, to the extent agreed to by ACF, will govern the calculation of reported amounts.

It will be necessary to begin using the Part 4 form prior to implementation of the demonstration since developmental costs and estimates of future quarterly expenditures are sought. It will be necessary to continue using Part 4 for a period after completion of the demonstration since evaluation costs may continue to be incurred (in accordance with the approved terms and conditions). Prior quarter adjustments may be reportable either for the demonstration cases or impact the demonstration through adjustment to amounts used in the cost neutrality formula.

Any State which has incurred demonstration expenditures in a quarter(s) prior to the issuance of the ACF IV-E-1 reporting form should enter cumulative data in sections B and C of Part 4 for the applicable demonstration period(s) on its first quarterly submission. States do not need to re-report previously submitted information using this form. This historical information should be combined with data for the quarter covered by the report. Technical assistance in the assembling of such documentation and the completion of Part 4 is available from ACF Regional Offices.

Amounts reported could be for either foster care or adoption assistance depending on which component of title IV-E has been waived. Should a State operate under waivers for both foster care and adoption assistance, costs for the two components must be reported separately on two forms. Each form should be checked to indicate whether foster care or adoption assistance components are reported.

Columns (a) through (e) should include actual expenditures only. Columns (f) and (g) should include the State's projection of anticipated costs for the next quarter.

Prior quarter adjustments (columns (c) and (d)) should be reported only for periods in which the applicable demonstration program was either operational or under development (for approved developmental costs only). Any amounts for periods prior to that date should be reported in Part 1 of form ACF-IV-E-1. All prior quarter adjustments for demonstration costs must also be identified in Part 2. Adjustments for demonstration experimental group costs must be identified as funding activity "FDE" for foster care or "ADE" for adoption assistance in Part 2, column I. Adjustments for control or comparison group costs must be claimed on Parts 1 and 2 of Form ACF-IV-E-1 and identified as such in the comments column, column (e), on Part 2. Each demonstration will have at least one control or comparison group established as part of the approved operational terms and conditions. This identification supports the appropriate calculation of the cost neutrality limit (CNL) for the overall demonstration program.

### Detailed Instructions for Part 4

Section and Line No.

#### Section A - Quarterly Demonstration Costs

- 1. Experimental Group Operational Expenditures** - Amounts spent on behalf of children participating in the experimental group in any approved and operational title IV-E waiver demonstration project in the State. These costs may cover the items classified as title IV-E maintenance assistance in Section 475(4)(A) of the Social Security Act, administration or training in accordance with Federal regulations at 45 CFR 1356.60 and any additional items or revised eligibility criteria contained in the approved terms and conditions for the waiver demonstration.

Some demonstrations require only the identification of maintenance assistance or administrative costs associated with demonstration cases. In accordance with the approved waiver demonstration terms and conditions, maintenance assistance, administration and State & local training costs, where applicable, should be summed and included on this line. Any amount reported on this line should not be reported in Part 1, lines 1-7 for foster care or lines 1-4 for adoption assistance. These expenditures are to be used in the cost neutrality calculation.

Claims on this line should not include costs on behalf of children participating in the demonstration as part of a control or comparison group. Such amounts are demonstration expenditures, but are reported on line 2 and are utilized in Section B of this report for cost neutrality purposes.

- 2. Control/Comparison Group Operational Expenditures** - Amount of expenditure/estimate attributable to children assigned to the demonstration control/comparison group in accordance with the approved terms and conditions. This line includes all appropriate maintenance, administration and/or training costs in accordance with the approved terms & conditions. Any amount reported on this line should also be reported in Part 1, lines 1-7 for foster care or lines 1-4 for adoption assistance. The dual reporting is necessary since the underlying costs are connected to the demonstration, but remain subject to reimbursement in accordance with existing title IV-E law and policy (without application of any waivers). These expenditures are to be used in the cost-neutrality calculation.
- 3. Total Demonstration Operational Expenditures** - Total amount for operations connected with the waiver demonstration project. Equal to the sum of lines 1 & 2.
- 4. Developmental and Evaluation Costs** - Amount of expenditure/estimate associated with the development of the demonstration proposal and the performance of a project evaluation. This includes administrative and training amounts.

for activities undertaken before implementation of the demonstration project and for development and ongoing conduct of the evaluation, in accordance with the approved waiver terms and conditions and the State's approved developmental cost and evaluation plans. These demonstration costs and estimates are not subject to the cost-neutrality calculation

It should be noted that evaluation costs might extend for a period beyond the completion of the demonstration project. In this case, Part 4 must be completed to identify such costs even though there may be no other demonstration expenditures or need for a cost-neutrality calculation.

- 5 **Total Expenditures** - Total costs associated with the demonstration program. The amount reported is equal to the sum of lines 3 and 4. This amount shall not be used in calculating the amount reported on the ACF-IV-E-1 Part 1, line 8 for foster care or line 5 for adoption assistance. The amounts on line 9 should instead be used in calculating the reported amount (see instructions below) in Part 1. This step is necessary to limit the total Federal share in accordance with the cost-neutrality provision.
- 6 **State Share** - Amount of non-Federal funds applicable to line 5 that the State is certifying as available as matching funds to operate the demonstration

#### Section B - Cost-Neutrality Calculation

- 7a **Cumulative Experimental Group Cost Neutrality Limit (CNL)** - The amount to be entered in columns (e) and (g) (Federal share) should result from calculations in accordance with the approved terms and conditions on cost-neutrality contained in each State's waiver. This represents the maximum amount of Federal funding available through this reporting period for reimbursement of allowable experimental group demonstration project operational expenditures (column e) and future estimates (column g).

The calculation must utilize data on demonstration experimental and control/comparison groups quarterly costs as delineated respectively on lines 1 and 2 in this part as well, as cost data for any previous quarter(s) in which the demonstration project was operable. The State will also require information on the number of "cases" in both the experimental and the control/comparison groups. A separate spreadsheet identifying the State's CNL calculations should be maintained at the State agency as supporting documentation.

The column (g) amount should equal the column (e) amount plus the State's estimate of the additional CNL amounts projected for the subsequent quarter. If the State's approved demonstration terms and conditions provide for the option of "up-front" payments based upon estimates exceeding the cost-neutrality calculation by up to five percent, the amount entered in column g should include any portion of such additional funding authority sought by the State. If this option is elected, the State must attach figures showing the projected cost neutrality and the additional up-front funding sought along with a narrative explaining the basis for requesting the specified amount of funding in excess of the CNL. Any such funds approved will be subject to reconciliation based upon actual expenditures in accordance with the approved waiver terms and conditions.

- b **Cumulative Demonstration Experimental Group Operational Expenditures** - This amount consists of the total of line 1 above plus line 7b from the previous quarter's Demonstration Projects ACF-IV-E-1 - Part 4 report (appropriate column entries). The State must adjust this figure to exclude any expenditure amount not reimbursable due to its removal from the line 7f holding account (amounts in excess of the CNL) because of the expiration of the two-year filing limitation or any amount which is disallowed. If a disallowance action is appealed, the State should not reduce the line 7b total if it decides to retain the funds pending a decision. In addition, should the State prevail in the appeal, a further adjustment to this line may be necessary.

An adjustment may also be made in column g for any portion of a State's previous demonstration project estimate which was not funded through grant award authority. Where any such adjustments are made, states should maintain appropriate supporting work papers identifying the source and basis for the adjustment.

- c **Cumulative Demonstration Control/Comparison Group Operational Expenditures** Total of line 2 above plus line 7c from the previous quarter's Demonstration Projects ACF-IV-E-1 - Part 4 report.

- d **Expenditures in Excess of CNL** - Step 1: Line 7b minus line 7a. Amounts should be treated as zero (0) if the result is a negative number. A positive number should be recorded as calculated. Step 2: Subtract (from the Step 1 result) any line 7d entries from the previous quarter's Demonstration Projects ACF-IV-E-1 - Part 4 report. The final result of these steps (including negative amounts) is entered in column (e) and (g) of this line.

- e **Total Quarterly Reimbursable Expenditures/Estimates** - Amounts should initially be reported in column (e) and (g) only. The amount entered is equal to line 5 minus line 7d. This is the maximum amount of the reported costs subject to Federal funding as of the date reported. If these expenditure/estimate amounts match the

amounts reported in the equivalent columns on line 5, the remaining line 7e columns should be completed by copying data from line 5. If, however, there is a difference between lines 5 and 7e, the line 7e total Federal share expenditure amount should then be apportioned between current and prior quarter amounts in accordance with the relative percentages attributable to each category on line 5, columns b and d. The amounts entered in the total computable columns (columns a, c & f) are to be calculated by dividing the Federal share amount (columns b, d & f) by the calculated rate of Federal financial participation (FFP). The calculated FFP rate is equal to the line 5 Federal share amount in the same column divided by the associated total computable column (e.g., col b/col a).

- f. **Remaining Current & Prior Expenditures (Holding Account)** - An entry is required only in column e. The amount reported is equal to the line 7d (current report) plus line 7f from the previous quarter's Demonstration Projects fiscal report minus any adjustments. Adjustments can result from either a determination that an amount is no longer reimbursable or a movement of holding account amounts to line 8d (expenditure of available savings). When demonstration project savings are generated, the State should consider using these funds as reimbursement of holding account expenditures. State supporting work papers should be maintained to demonstrate the results of this analysis of the holding account amount each quarter.

Amounts should not ordinarily remain in the holding account beyond the last quarter during which the associated waiver demonstration project is operational in accordance with the approved terms and conditions. The holding account entry may continue to be reported for several quarters after the completion of the demonstration operations if the State intends to report prior quarter adjustments to demonstration expenditures. Federal regulations at 45 CFR 95.7, however, impose time constraints for the reporting of increasing adjustment claims. Any amounts pending beyond this limit should be removed from the holding account as no longer subject to reimbursement.

#### Section C - Savings/Expenditure Calculation

- 8a. **Cumulative Savings Realized** - (Line 7a minus line 7b) This amount should be reported in column e. An entry of zero (0) should be made unless the result is a positive number.
- b. **Cumulative Savings Previously Expended** - Line 8e from the previous quarter's Demonstration Projects ACF-IV-E-1, Part 4 report.
- c. **Total Savings Available for Expenditure** - (Line 8a minus line 8b) Amount of savings remaining available for expenditure during the life of the demonstration project.
- d. **Quarterly Expenditure of Available Savings** - The amount of available savings (line 8c) either expended this quarter for otherwise not claimed title IV-B/IV-E eligible activities or the portion of the holding account expenditures (line 7f) applied against savings. The appropriate level of State match should be used for all expenditures of available demonstration project savings.
- If holding account amounts are included, an appropriate deduction to line 7g should appear on the next quarterly Demonstration Projects fiscal report. The State should maintain supporting work papers establishing how all amounts were expended.
- e. **Cumulative Expenditure of Savings** - (Line 8b plus line 8d) - This amount identifies the portion of ever-earned savings expended to date.

#### Section D - Quarterly Claim/Estimate

9. **Total** - Enter the amount from line 7e minus the amount on line 2 plus the amount on line 8d. Control/comparison group expenditures must be deducted from the amount on line 7e to avoid a duplicative claim. All control/comparison group expenditures must be claimed on Part 1, lines 1-7 for foster care or 1-4 for adoption assistance. The line 8d amount is added to provide funding for qualifying expenditures of earned savings. The entries on line 9 should be transferred to Part 1, line 8 for foster care or line 5 for adoption assistance.

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 Administration for Children and Families

**TITLE IV-E FOSTER CARE AND ADOPTION ASSISTANCE FINANCIAL REPORT**  
**PART 1 : QUARTERLY REPORT OF EXPENDITURES AND ESTIMATES**

THE PAPERWORK REDUCTION ACT OF 1995 (Pub. L. 104-13)  
 Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

CATEGORY	CURRENT QUARTER ENDED:			NEXT QUARTER ENDING:		
	Current Quarter Expenditures		Prior Quarter Adjustments		Next Quarter Estimate	
	(a) Total Computable	(b) Federal Share *	(c) Total Computable	(d) Federal Share	(e) Total Computable	(f) Federal Share*
FMAP Rate:						
1. Maintenance Assistance Payments						
2. Fed. share Child Support Collections						
3. Net Assistance Payments (1 minus 2)						
4. Avg. Monthly No. of Children						
5. State and Local Administration:						
a. Case Planning & Management						
b. Pre-placement Activities						
c. Eligibility Determinations						
d. SACWIS - Operation costs						
e. Other Administration						
f. Total State and Local Administration (a+b+c+d+e)						
6. SACWIS - Development costs						
7. State and Local Training						
8. Demonstration Projects						
<b>9. Total **</b>						

10. State share of next quarter Foster Care estimate [ Line 9(e) minus 9(f) ] ...

\*The Federal share percentage of total computable for payments is the FMAP rate, administration is 50%, SACWIS is 50% and training is 75%.

\*\*For Line 9, Col. (a), (c), (d) & (e) = Lines 1+5(f) +6+7+8. Col. (b) & (f) = Lines 3+5(f)+6+7+8.

**TITLE IV-E FOSTER CARE AND ADOPTION ASSISTANCE FINANCIAL REPORT**  
**PART 1: QUARTERLY REPORT OF EXPENDITURES AND ESTIMATES**

STATE:	CURRENT QUARTER ENDED:		NEXT QUARTER ENDING:		New (N) or Revised (R):	
	(a) Total Computable	(b) Federal Share *	(c) Total Computable	(d) Federal Share	(e) Total Computable	(e) Federal Share *
<b>CATEGORY</b>	Current Quarter Expenditures		Prior Quarter Adjustments		Next Quarter Estimate	
<b>ADOPTION ASSISTANCE</b>	FMAP Rate:					
1. Adoption Assistance Payments						
2. Avg. Monthly No. of Children						
3. State and Local Administration						
4. State and Local Training						
5. Demonstration Projects						
<b>6. Total (Lines 1+3+4+5)</b>						

7. State share of next quarter Adoption Assistance estimate [ Line 6(e) minus 6(f) ] ...

\*The Federal share percentage of total computable for payments is the FMAP rate, administration is 50% and training is 75%.

This is to certify that all information reported on all parts of this form is accurate and true to the best of my knowledge and belief. This also certifies that the State's share of next quarter estimate reported in Part 1 for Foster Care and Adoption Assistance is or will be available to meet the non-Federal share of expenditures as required by law.

Signature of Approving Official \_\_\_\_\_ Date \_\_\_\_\_  
 Typed Name, Title, Agency Name \_\_\_\_\_

Send completed form to:

DHHS, ACF, ACYF  
Office of Management Services  
330 C Street, S.W.  
Washington, D. C. 20447

Send a copy to your Regional Office

# **EXHIBIT S**

RC03: Therapeutic Crisis Intervention  
Residential Child Care Project, Cornell University

**BREAKDOWN OF COURSES EXPENSES**

	TxT	Updates	IAB	VP&AR	SPR
PERSONNEL	\$111,023	\$71,049	\$44,414	\$38,663	\$0
FRINGE	\$42,522	\$27,212	\$17,011	\$14,808	\$0
CASUAL EMPLOYEES	\$9,750	\$9,750	\$0	\$6,500	\$0
FRINGE	\$3,734	\$3,734	\$0	\$2,490	\$0
AV EQUIPMENT	\$6,450	\$4,080	\$3,000	\$0	\$660
EASEL PADS	\$150	\$240	\$75	\$0	\$0
PADS/PENCILS	\$85	\$160	\$45	\$0	\$0
EVAL SUPPLIES	\$680	\$1,280	\$360	\$0	\$0
STAFF TRAVEL	\$12,097	\$10,445	\$13,546	\$42,542	\$0
CONFERENCE TRAVEL	\$1,830	\$3,172	\$1,098	\$0	\$0
CONSULTANT FEE and TRAVEL	\$0	\$4,250	\$6,375	\$0	\$25,000
PRINTING	\$12,750	\$6,400	\$1,350	\$3,000	\$0
POSTAGE/SHIPPING	\$3,000	\$5,200	\$1,800	\$0	\$0
REPRODUCTION OF TCI VIDEO	\$7,650	\$0	\$0	\$0	\$0
BOOKS/JOURNALS	\$980	\$627	\$392	\$0	\$0
REPRINT PERMISSION	\$368	\$235	\$147	\$0	\$0
TRAINING SPACE RENTAL	\$24,625	\$14,800	\$8,500	\$0	\$2,575
TRAINEE COSTS	\$64,766	\$0	\$0	\$0	\$0
<b>SUBTOTAL</b>	<b>\$302,461</b>	<b>\$162,635</b>	<b>\$98,113</b>	<b>\$108,003</b>	<b>\$28,235</b>
FACILITIES & ADMINISTRATIVE COSTS	\$178,452	\$95,954	\$57,887	\$63,722	\$16,659
ADMINISTRATION	\$60,830	\$38,928	\$24,334	\$11,030	\$2,758
<b>GRAND TOTAL</b>	<b>\$541,743</b>	<b>\$297,517</b>	<b>\$180,334</b>	<b>\$182,755</b>	<b>\$47,651</b>

ADMINISTRATION	
PERSONNEL+TEMP	\$34,951
ASSOCIATED FRINGE	\$13,386
EQUIPMENT	\$6,800
FAX LEASE	\$450
OFFICE SUPPLIES	\$1,155
SOFTWARE	\$1,000
OFFICE FURNITURE	\$1,900
ADMINISTRATIVE STAFF TRAVEL	\$238
OTHER COSTS	\$0
NETWORK COSTS	\$2,930
PHONE	\$11,052
PHOTOCOPY	\$8,500
OFFICE RENT ITHACA	\$0
EQUIP REPAIR, MAINTENANCE, & INSURANCE	\$1,000
GENERAL OUTSIDE SERVICES	\$3,355
<b>SUBTOTAL</b>	<b>\$86,718</b>
FACILITIES & ADMINISTRATIVE COSTS	\$51,163
<b>TOTAL ADMINISTRATION</b>	<b>\$137,880</b>



## CHART I

Personnel .....	\$ 111,023
Fringe .....	42,522
Casual Employees .....	9,750
Fringe .....	3,734
AV Equipment .....	6,450
Easel Pads .....	150
Pads/Pencils .....	85
Eval Supplies .....	680
Staff Travel .....	12,097
Conference Travel .....	1,830
Consultant Fee and Travel .....	0
Printing .....	12,750
Postage/Shipping .....	3,000
Reproduction of TCI video .....	7,650
Books/Journals .....	980
Reprint Permission .....	368
Training Space Rental .....	24,625
Trainee Costs .....	64,766
<b>Subtotal .....</b>	<b>302,461</b>
Facilities & Administrative Costs (Total) <sup>1</sup> .....	178,452
Administration .....	60,830
<b>Grand Total .....</b>	<b>\$ 541,743</b>

---

<sup>1</sup> This amount (\$178,452) is 59% of Cornell's stated "Subtotal" of its incurred "expenses" (\$302,461). This corresponds to Cornell's negotiated "Facilities & Administrative" ("indirect" or "F&A") cost rate for on-campus direct costs. However, all TxI training, as well as the whole panoply of programs in Cornell's CPSII training program -- whether provided through the agreement with OCFS or directly to other clients -- is conducted off campus, and Cornell is thus unlawfully using this 59% F&A rate, as described in ¶¶ 193-202, *infra*.

**CHART II**

Personnel .....	\$ 111,023
Fringe .....	42,522
Casual Employees .....	9,750
Fringe .....	3,734
AV Equipment* .....	6,450
Easel Pads* .....	150
Pads/Pencils .....	85
Eval Supplies .....	680
Staff Travel* .....	12,097
Conference Travel* .....	1,830
Consultant Fee and Travel .....	0
Printing .....	12,750
Postage/Shipping .....	3,000
Reproduction of TCI video .....	7,650
Books/Journals .....	980
Reprint Permission .....	368
Training Space Rental* .....	24,625
Trainee Costs* .....	64,766
<b>Sub-Total .....</b>	<b>302,461</b>
Facilities & Administrative Costs (Total) .....	178,452
Administration .....	60,830
<b>Grand Total .....</b>	<b>\$ 541,743</b>

**Adjustment of TxT expenses**

Deduct Total of "Starred" Expenses ..... \$ 109,918  
 (Starred (\*) expenses -- those borne directly by a non-OCFS Cornell client, as per Cornell's brochure -- are deducted from the Sub-Total of Training Expenses)

Deduct proportionately reduced total of "Starred" Expenses as F&A costs<sup>1</sup> ..... \$ 64,851

**Grand Total of Adjusted TxT expenses ..... \$ 366,974**

**Per-Day Adjusted TxT expenses<sup>2</sup> ..... \$ 7,339**

---

<sup>1</sup> That is, 59% of the total Starred Expenses (\$109,918).

<sup>2</sup> Cornell has indicated that there were a total of 50 training days of the TxI program in 2004, thus the Grand Total of Adjusted expenses above is divided by 50 to obtain the per-day cost of \$7339.

# **EXHIBIT T**

**DIGEST OF DECISIONS AFFECTING DEFENDANT OCFS BY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, DEPARTMENTAL APPEALS BOARD ("DAB")  
APPELLATE DIVISION ("DAB DECISION"). THEY ARE IN REVERSE  
CHRONOLOGICAL ORDER**

1. In DAB Decision 1701, August 25, 1999, the DAB affirmed HHS's Division of Cost Allocation's (DCA) disallowance of certain administrative activities in OCFS's Cost Allocation Plan (CAP) as not eligible for reimbursement under Title IV-E. The disallowed activities involved non-client contact social services such as preparing written reports following or preceding the provision of social services in the field. The activities were deemed not allowable because they involved the delivery of social services and also because they are neither listed in the regulations as an allowable IV-E activity nor are they "closely related" to a listed activity. (As the decision dealt with an instruction to OCFS to amend its Cost Allocation Plan prospectively, no dollar amount was attributed in the DAB decision to the prospective disallowed costs.)

2. In DAB Decision 1666, July 22, 1998, the DAB affirmed ACF's disallowance of certain indirect costs incurred by outside training contractors that were claimed by OCFS under Title IV-E at 75% FFP. ACF determined the cost pools used to calculate the indirect costs rates contained elements unrelated to training that were not reimbursable as training in accordance with 45 C.F.R. § 235.64, but were instead administrative expenditures that were reimbursable at 50% FFP. (No monetary amount was attributed to the disallowance in the DAB decision )

3. In DAB Decision 1649, February 23, 1998, the DAB affirmed ACF's disallowance of \$76,766,042 in Federal reimbursement claims for Federal funds under Title IV-E for administrative expenses of case workers' pre-placement protective services for children. The disallowance was affirmed, based on DAB Decisions 1428 and 1630.

4. In DAB Decision 1630, September 18, 1997, the DAB affirmed disallowances for the cost of administrative activities of caseworkers who provided pre-placement protective and preventive services, in the total amount of \$109,933,706. This decision followed DAB 1428.

5. In DAB Decision 1503, December 21, 1994, the DAB affirmed ACF's disallowance of OCFS's claims for \$86,093,309 in Federal funds under IV-E. The claims involved administrative costs incurred for protective services to provided the children for whom there was reasonable cause to suspect abuse or mistreatment. The disallowance was affirmed based on DAB Decision 1428.

6. In DAB Decision 1485, July 21, 1994, the DAB affirmed ACF's disallowance of \$101,094,142 in claims by OCFS for Federal funds under IV-E. The claims were for foster care maintenance payments for children found not to be eligible under IV-E.

7. In DAB Decision 1470, March 23, 1994, the DAB affirmed the disallowance of \$136,768,669 in claims for Federal funds under Title IV-E. OCFS claimed administrative costs for protective

services pursuant to a proposed amended cost allocation plan (CAP). This decision was based on DAB Decision 1428.

8. In DAB Decision 1442, October 1, 1993, the DAB affirmed ACF's disallowance of \$47,427,952 in claims for Federal funds under Title IV-E. The claims were for administrative costs for protective services provided. This decision was also based on DAB Decision 1428.

9. In DAB 1428, July 21, 1993, the DAB affirmed ACF's disallowance of four categories of activities performed by Child Protective Services workers. The total of the disallowance is not calculable from the DAB decision, which disallowed four out of ten categories of costs. The DAB's decision was affirmed on April 1, 1998 by the United States District Court for the Southern District of New York, 1998 WL 150955 (S.D.N.Y. 1998).

# **EXHIBIT U**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA )  
ex rel., GEORGE J. DENONCOURT, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STATE OF NEW YORK, et al. )  
 )  
 Defendants )

Civil No. 92-2808 PF

FILED

DEC 27 1994

Filed Under Seal

CLERK U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

STIPULATION OF SETTLEMENT AND DISMISSAL OF CLAIMS INVOLVING STATE  
OF NEW YORK, AND ORDER

Plaintiff the United States of America ("United States"),  
Qui Tam Plaintiff George Denoncourt, and defendants the State of  
 New York, the New York State, Department of Social Services  
 (NYSDDS), the Office of Human Resource Development (OHRD), the  
 State University of New York (SUNY) at Albany, SUNY Brockport,  
 SUNY Central Administration, The Research Foundation of SUNY, the  
 State University Colleges at Buffalo (SUC Buffalo), the City  
 University of New York, and NYSDSS employees Robert Donahue,  
 Robert Hagstrom, Carol Polnak, Carol DeCosmo and Will Zwink  
 (collectively referred to herein as the "State of New York"),  
 hereby stipulate and agree that, subject to the approval of the  
 Court, the following action should be taken in this matter:

The United States shall be permitted to intervene in this  
 action for the further limited purpose of resolving its claims  
 against the State of New York, and hereby does so intervene:

The United States' claims against the State of New York  
 described in the attached Settlement Agreement and Release, and  
 Mr. Denoncourt's claims described in the Settlement Agreement and

Release, shall be resolved on the terms set forth in that Settlement Agreement and Release;

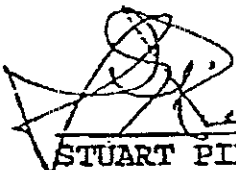
The Court shall have jurisdiction over the parties to enforce the terms of the Settlement Agreement and Release;

The claims of the United States and Mr. Denoncourt against the State of New York asserted in Claim One of the Complaint in this action are hereby dismissed;

The seal of this action shall be further lifted to the extent necessary for the United States and the State of New York to comply with their policies and procedures for notifying the public of settlements;

In all other respects, the seal in this action shall remain in effect until April 30, 1995, to allow the United States to continue its investigation of the remaining defendants, and attempt to resolve claims where appropriate.

Respectfully submitted,



STUART PIERSON, DC Bar #56820  
Davis, Wright Tremaine  
1155 Connecticut Ave., N.W.  
Suite 700  
Washington, D.C. 20036  
Counsel for Relator

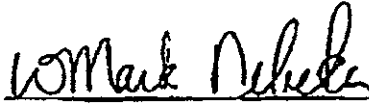
FRANK W. HUNGER  
Assistant Attorney General

ERIC H. HOLDER, JR., DC Bar #303115  
United States Attorney





ALAN KAUFMAN, ESQ.  
Assistant Attorney General  
New York State Department  
of Law  
State Capitol  
Albany, N.Y. 12224  
(518) 473-5099



W. MARK NEBEKER, DC Bar #396739  
Assistant United States Attorney  
555 4th Street, N.W., Rm. 10-930  
Washington, DC 20001  
(202) 514-7230

Counsel for Defendants New  
York State, New York State  
Department of Social Services,  
Office of Human  
Resource Development, Robert  
Donahue, Carol Polnak, Will  
Zwink, Carol DeCosmo, Robert  
Hagstrom, State University of  
New York (SUNY) at Albany,  
SUNY Brockport, the State  
University Colleges  
at Buffalo, SUNY Central  
Administration, and the City  
University of New York.

*James R. Dennehey*

JAMES R. DENNEHEY, ESQ.  
General Counsel  
Office of Legal Affairs  
The Research Foundation  
of State University  
of New York  
P.O. Box 9  
Albany, N.Y. 12201-0009  
(518) 434-7045

*Shelley R. Slade*

MICHAEL F. HERTZ  
STEPHEN D. ALTMAN  
SHELLEY R. SLADE  
Attorneys, Civil Division  
U.S. Department of Justice  
Post Office Box 261  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 307-0264

Counsel for Defendant The  
Research Foundation of  
State University of New York

SO ORDERED:

DATE: Dec. 27, 1994

*Gladys Kesler*  
UNITED STATES DISTRICT JUDGE

FILED

DEC 27 1994

SETTLEMENT AGREEMENT AND RELEASE

Parties

CLERK, U.S. DISTRICT CO  
DISTRICT OF COLUMBIA

This Settlement Agreement and Release ("Agreement") is made this 20<sup>th</sup> day of December, 1994, among the United States of America ("United States"), acting through the Department of Justice and the Office of Inspector General and the Division of Cost Allocation of the Department of Health & Human Services, and the State of New York, acting through the State Attorney General, the Department of Social Services, and the General Counsel of The Research Foundation of State University of New York, and George Denoncourt (collectively referred to herein as "the Parties"). The State of New York as used herein is intended by the Parties to encompass the following entities and persons: the State of New York, the New York State Department of Social Services (NYSOSS), the Office of Human Resource Development (OHRD) of NYSDSS, the State University of New York (SUNY) at Albany, SUNY Brockport, SUNY Central Administration, The Research Foundation of SUNY, the State University Colleges at Buffalo (SUC Buffalo), the City University of New York (CUNY), and NYSDSS employees Robert Donahue, Robert Hagstrom, Carol Polnak, Carol DeCosmo and Will Zwink.

Recitals

1. WHEREAS, the Civil Division of the United States Department of Justice (DOJ), with the Office of U.S. Attorney for the District of Columbia, and the Office of Audit Services and Office of Investigations of the Office of Inspector General of the Department of Health & Human Services,

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investigating allegations that NYSDSS knowingly submitted false claims in order to obtain federal funds made available under the Social Security Act for the training of social service workers, and thereby violated the civil False Claims Act, 31 U.S.C. § 3729 et seq.;

2. WHEREAS, DOJ also has been investigating allegations that SUNY and its components and agents, and CUNY at Queens, Law Center, knowingly submitted false claims, and caused the submission of false claims, in order to obtain federal funds made available under the Social Security Act for the training of social service workers, and thereby violated the civil False Claims Act, 31 U.S.C. § 3729 et seq.;

3. WHEREAS, the United States has alleged that NYSDSS knowingly has made false statements and submitted false claims for federal funds as a result of the following conduct: (i) failing to credit training fees collected from private providers and administrative fees charged private contractors against training costs charged to the federal government, in knowing violation of federal regulations, from 1983 through June 30, 1994; (ii) using third party in-kind contributions for the state share of training expenditures, in knowing violation of federal regulations and policies, from 1983 through June 30, 1994; (iii) knowingly using federal training funds to finance the salaries and related costs of personnel hired under training contracts who worked on-site at NYSDSS and performed non-training functions, through September 30, 1994; (iv) using federal training funds

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Camp Liberty during the 1989-1990 state fiscal year, in knowing violation of the law; (v) knowingly submitting claims for federal funds based upon unallowable, unsubstantiated and/or inflated (a) private training contractor costs during the period 1983 through June 30, 1994, through methods that included, but were not limited to, the extension and/or modification of contracts, unsubstantiated indirect cost rates, rental and user fees for equipment owned by the contractor, and "market value" charges for consultants that exceeded actual costs; (b) SUC Buffalo salaried personnel, equipment and consultant training costs during the period covering January 1, 1986 through December 31, 1993, and (c) CUNY training costs during the period October 1, 1989 through September 30, 1992; and (vi) failing to allocate training costs to benefitting state programs, in knowing violation of federal regulations;

4. WHEREAS, the United States has alleged that (i) SUNY Albany, SUC Buffalo and the Research Foundation of SUNY knowingly have caused the submission of false claims for federal funds as a result of the knowing submission of claims under training contracts with NYSDSS, and the Memorandum of Understanding between the Research Foundation of State University of New York and NYSDSS ("MOU"), for expenditures for personnel working on-site at NYSDSS who performed non-training functions, and (ii) SUC Buffalo and the Research Foundation of SUNY knowingly have caused the submission of false claims under the MOU for salaried personnel, equipment and consultant

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1, 1986 through December 31, 1993 period that did not benefit the training contract;

5. WHEREAS, the United States has alleged that CUNY knowingly has caused the submission of false claims for federal funds by knowingly submitting claims for inflated, unallowable or unsubstantiated training costs under Contract No. C-003732 during the October 1, 1989 through September 30, 1992 period;

6. WHEREAS, DOJ's investigation also has concerned (i) NYSDSS's failure to credit training fees collected from local districts, and revenue from the sale of training material, against training costs charged to the federal government; and (ii) allegations that OHRD employees engaged in "bid-rigging" or other improper conduct with respect to the procurement of the 1990-1991 "MAPPER Contract" for computer training.

7. WHEREAS, on December 14, 1992, George Denoncourt filed a Complaint under the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b), captioned United States ex rel. Denoncourt v. New York State Department of Social Services et al., Civil Action No. 92-2808 (D.D.C.), that named, among others, the State of New York, NYSDSS, OHRD, SUNY Albany, SUNY Brockport, SUNY (Central Administration) and Research Foundation, SUC Buffalo, CUNY, Robert Donahue, Robert Hagstrom, Carol Polnak, Carol DeCosmo and Will Zwink as defendants, and alleged that these entities and persons have submitted false claims, or caused the submission of false claims, for federal funds available for the

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in violation of the False Claims Act, and whereas Mr. Denoncourt amended that Complaint by a First Amended Complaint and a Proposed Second Amended Complaint (hereinafter these three complaints are collectively referred to as "the Complaint");

8. WHEREAS, the State of New York does not admit the truth or validity of any of the allegations set forth in Paragraphs 1 through 7 above, or of any of the allegations in the Complaint, First Amended Complaint or Second Amended Complaint in the action captioned United States ex rel. Denoncourt v. New York State Department of Social Services, et al., Civil Action No. 92-2808 (D.D.C.), nor does the State of New York admit that any of the alleged actions of the State of New York constitute violations of the False Claims Act. Neither this agreement nor any provision of this agreement may be cited or interpreted as an admission or acknowledgement by the State of New York of the validity of any of the allegations set forth in Paragraphs 1 through 7 above, or any of the allegations in the above-referenced action.

9. WHEREAS, the United States, the State of New York and George Denoncourt are desirous of a final negotiated settlement and compromise of all claims of the United States and George Denoncourt against the State of New York under the False Claims Act, 31 U.S.C. §§ 3729 et seq., under the common law of fraud, deceit, unjust enrichment, contract or payment by mistake of fact, or under any other statute creating causes of action for civil damages or civil penalties, and all actions by HHS to disallow as Federal financial participation claims by the State

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of New York, for the alleged conduct described in Paragraphs 3, 4 and 5, with the exception of the allegation in clause (vi) in Paragraph 3, above, concerning NYSDSS's failure to allocate training costs to benefitting state programs in knowing violation of federal regulations;

10. WHEREAS, the United States, the State of New York and George Denoncourt are desirous of a final negotiated settlement of any and all claims of the United States against the State of New York under the False Claims Act or the common law of fraud for (i) NYSDSS's failure to credit local district training fees and revenue from the sale of training material against expenditures charged to the federal government; (ii) allegations that OHRD employees engaged in "bid-rigging" or other improper conduct with respect to the procurement of the 1990-1991 "MAPPER Contract" for computer training; and (iii) NYSDSS's alleged failure to allocate training costs to benefitting state programs in knowing violation of federal regulations.

11. WHEREAS, the United States and George Denoncourt are desirous of a final negotiated settlement and compromise of any and all claims of George Denoncourt against the United States under 31 U.S.C. § 3730(d) arising from Mr. Denoncourt's claims against the State of New York set forth in Claim One of the Complaint described in Paragraph 7, above.

12. WHEREAS, the State of New York and George Denoncourt are desirous of a final negotiated settlement and compromise of any and all claims of Mr. Denoncourt asserted on behalf of the



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United States against the State of New York under 31 U.S.C. § 3730(b) in Claim One of the Complaint described in Paragraph 7, above;

NOW THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

Terms of Agreement

13. In settlement and compromise of any and all claims of the United States and Mr. Denoncourt against the State of New York described in Paragraphs 9 and 10, above, the State of New York agrees to pay \$26.97 million to the United States as follows:

On or before December 27, 1994, counsel for the State of New York will deliver a check in the amount of \$26.97 million made out to the order of the Treasurer of the United States, to the following:

Michael Hertz, Director  
Attn: Shelley Slade  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice  
10th St. and Constitution Ave., N.W.,  
Rm. 3720  
Washington, D.C. 20530

14. Contingent upon the United States receiving the payment from the State of New York set forth in Paragraph 13, and in settlement and compromise of any and all claims of Mr. Denoncourt against the United States described in Paragraph 11, above, the

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United States agrees to pay \$4.05 million to George Denoncourt, as follows:

As soon as feasible after receiving the payment described in Paragraph 13, the United States will make an electronic transfer for George Denoncourt in the amount of \$4.05 million to DAVIS WRIGHT TREMAINE, Attn: Alma Clark, Seattle First National Bank, 4th & Madison, Seattle, WA. 98101, ABA No. 125000024, Account No. 50033414, Client No. 31596.

15. In settlement and compromise of any and all claims of the United States described in Paragraphs 9 and 10, above, the State of New York further agrees not to engage in certain practices underlying the United States' fraud claims, as follows:

a. Beginning in 1995, NYSDSS will no longer enter into contracts that provide, and NYSDSS will not otherwise request or require, that private training contractors contribute the state match of training expenses through in-kind contributions. Any and all amendments made in and after 1995 to contracts with private training contractors will eliminate the requirement of a contractor in-kind contribution of the state match.

b. Beginning with the July to September 1994 quarter, and for all quarters thereafter, for training contracts with private entities, NYSDSS will claim federal reimbursement by multiplying the applicable federal financial participating (FFP) rate for the various programs by the actual payments made by NYSDSS to the private training entities. Thus, for example, if NYSDSS pays a private contractor \$1000 in a

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under Title IV-A, which has a 50% FFP rate, the State of New York will claim \$500 from the federal government, or 50% of the actual payment to the contractor.

c. NYSDSS need not comply with the requirements in subparagraphs (a) and (b) above for a particular subtitle of the Social Security Act, if future amendments to that subtitle, or future judicial decisions, HHS Departmental Appeals Board (DAB) decisions, HHS policy interpretation questions (PIQs), HHS action transmittals, or other written HHS policy statements addressed to states, expressly permit states to use in-kind contributions from private training contractors for the state match of training expenses, without the need for advance approval. In addition, NYSDSS need not comply with subparagraphs (a) and (b) above for a particular subtitle of the Social Security Act, if HHS provides advance approval for the State to use in-kind contributions from private training contractors for claims made under that subtitle. Such approval must expressly reference the State's intent to use in-kind contributions from private training contractors for the state match, the regulatory provision authorizing HHS's approval of the practice, and the subtitle of the Social Security Act under which the practice will be allowed.

d. Beginning with the July to September 1994 quarter, and for all quarters thereafter, NYSDSS agrees to deduct any and all fees paid by private entities for training from the training costs for which the State claims federal financial participation in accordance with 45 C.F.R. § 74.42(c), unless the State

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receives advance, written approval from the applicable HHS program operating divisions to use the income from private provider training fees in the manner described in 45 C.F.R. § 74.42(d) or (e). Such written approval must specifically reference NYSDSS's income from fees paid by private entities for training, and must specifically identify the use(s) that NYSDSS may make of such income, and the subsection(s) of 45 C.F.R. § 74.42 authorizing HHS to approve such use(s).

e. Beginning with the July to September 1994 quarter, and for all quarters thereafter, in accordance with 45 C.F.R. § 74.42(c), NYSDSS agrees to deduct any and all administrative fees collected from private training contractors from the administrative costs of the NYSDSS entity responsible for administering training contracts, before allocating and charging such costs to federal and state funding sources, unless the State receives advance, written approval from the applicable HHS program operating divisions to use the income from private training contractor administrative fees in the manner described in 45 C.F.R. § 74.42(d) or (e). Such written approval must specifically reference NYSDSS's income from private training contractor administrative fees, and must specifically identify the use(s) that NYSDSS may make of such income, and the subsection(s) of 45 C.F.R. § 74.42 authorizing HHS's approval of such use(s).

f. NYSDSS need not comply with subparagraphs (d) and (e) above if future amendments to the Social Security Act, or future

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judicial decisions, HHS Departmental Appeals Board (DAB) decisions, HHS policy interpretation questions (PIQs), HHS action transmittals, or other written HHS policy statements addressed to states, allow the State to use program income for something other than the deduction alternative currently described in 45 C.F.R. § 74.42(c), without the need for permission under the grant. In such case, NYSDSS must treat administrative fees paid by private contractors, and fees paid by private entities for training, as program income according to the new requirements governing same.

g. Beginning with the October to December 1994 quarter, and for all quarters thereafter, NYSDSS will claim FFP at the rates applicable to training activities only where such costs reflect only the development of curricula, instruction and other activities eligible for reimbursement at the FFP rates applicable to training pursuant to any provisions or statements thereon found in the Social Security Act, HHS's regulations, judicial decisions, HHS DAB decisions, HHS PIQs, HHS action transmittals, and other HHS written policy statements addressed to states.

h. To the extent that this Paragraph imposes obligations on the State of New York that exceed the State of New York's obligations under the law, the State of New York will not be obliged to comply with this Paragraph after December 31, 2001.

i. Nothing in this Paragraph is intended to, or shall be interpreted by the Parties, to authorize the State of New York to violate the Social Security Act, HHS's regulations, judicial decisions, HHS DAB decisions, HHS PIQs, HHS action transmittals.

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other HES written policy statements addressed to states, or other federal law.

j. The State of New York agrees to pay the United States treble damages in the event it knowingly resumes a practice in violation of the agreements set forth in this Paragraph. Damages shall be computed by assessing the fiscal impact on the federal government of the State of New York's knowing continuation of the practice or practices in question. The words "knowingly" and "knowing" used in this Paragraph shall be defined in accordance with 31 U.S.C. § 3729(b). The parties do not intend this Paragraph to cover isolated instances in which the State of New York inadvertently, and without deliberate ignorance or reckless disregard of the effect of its actions, violates one of the agreements set forth in this Paragraph.

16. It is agreed that all costs (as defined in the Federal Acquisition Regulations (FAR) 31.205-47) incurred by or on behalf of the State of New York and its officers, directors, agents and employees in connection with (i) the matters covered by this Settlement Agreement, (ii) the federal government's audit and investigation of the matters covered by this Settlement Agreement, (iii) the State of New York's investigation, defense of the matter, and any corrective actions, (iv) the negotiation of this Settlement Agreement, and (v) the payments made to the United States, to Davis Wright Tremaine, and to Mr. Denoncourt pursuant to this Settlement Agreement shall be unallowable costs for federal government reimbursement purposes, and shall not be

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included in claims submitted to the federal government. These amounts shall be separately accounted for by the State of New York by identification of costs incurred: 1) through accounting records to the extent that is possible; 2) through memorandum records including diaries and informal logs, regardless of whether such records are part of official documentation, where accounting records are not available; and 3) through itemized estimates where no other accounting basis is available. If any such amounts have been included in claims submitted to HHS, NYSDSS, on its quarterly expenditure report for the October to December 1994 period, will make corresponding downward adjustments so that HHS is reimbursed in full for such amounts.

At the time that it makes these adjustments, the State of New York agrees to submit to HHS's Division of Cost Allocation a written report with the following information:

- a. the identification of all NYSDSS functions or activities that have incurred costs of the type described in this Paragraph;
- b. the identification of all NYSDSS functions or activities identified in response to (a) that have claimed, or will make claims under federal programs, for costs of the type described in this Paragraph;
- c. for those functions or activities identified in response to (a) that the State of New York notes will not make claims under federal programs for costs of the

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type described in this Paragraph, the bases for the State's conclusions;

- d. for those functions or activities identified in response to (b), the methods and/or procedures used by the State of New York to determine the required adjustments for each unit, including the time period of the adjustment covered for each unit; and
- e. identification of the procedures in place to ensure that any future costs of the type described in this Paragraph will not be claimed from the federal government.

17. Contingent upon the United States receiving the payment set forth in Paragraph 13, above, the United States and George Denoncourt hereby release the State of New York from the claims described in Paragraphs 9 and 10, above. Contingent upon the United States receiving the payment set forth in Paragraph 13, above, Mr. Denoncourt hereby releases the State of New York from all claims that he asserts on behalf of the United States in Claim One of the Complaint described in Paragraph 7. The United States expressly reserves and does not waive any and all claims at common law other than the common law of fraud, and any and all claims under statutes other than the False Claims Act, for (i) NYSDSS's failure to credit local district training fees and revenue from the sale of training material against expenditures charged to the federal government; (ii) allegations that OHRD employees engaged in "bid-rigging" or other



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respect to the procurement of the 1990-1991 "MAPPER Contract" for computer training; and (iii) NYSDSS's alleged failure to allocate training costs to benefitting state programs, in knowing violation of federal regulations. Further, unless expressly released in the first sentence of this Paragraph, the United States expressly reserves and does not waive all other claims under the False Claims Act, or under other statutes or the common law, if any, for statements and claims made by the State of New York and its contractors. Mr. Denoncourt expressly reserves and does not waive the claims in Claims Two and Three of the Second Amended Complaint.

18. Contingent upon Mr. Denoncourt receiving the \$4.05 million payment set forth in Paragraph 14, above, Mr. Denoncourt hereby releases the United States from any claims he has or may have under 31 U.S.C. § 3730(d) arising from Mr. Denoncourt's claims against the State of New York set forth in Claim One of the Complaint described in Paragraph 7, above.

19. The United States and Mr. Denoncourt agree that the releases granted by Mr. Denoncourt herein do not bar Mr. Denoncourt from asserting claims for a share of any recoveries by the United States from defendants in the qui tam action besides the State of New York. Further, Mr. Denoncourt hereby reserves the right to take the position in the future that he is entitled to more than 15% of any recoveries by the United States from persons other than the State of New York. The United States hereby reserves the right to take the position in the future

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Mr. Denoncourt is entitled to less than 15% of any such recoveries.

20. On the same day that this Settlement Agreement is executed by the State of New York, the State of New York, including The Research Foundation of the State University of New York, agrees to have its counsel sign the Stipulation at Attachment A, which would dismiss the United States' claims against the various entities and persons defined herein as "the State of New York" that are asserted in Claim One of the action described in Paragraph 7, above. On or before December 27, 1994, and contingent upon the State of New York making the payment called for by Paragraph 13, the United States and Mr. Denoncourt agree to have their counsel sign the Stipulation. Contingent upon the performance of the other agreements in this Paragraph, the United States agrees to file the Stipulation with the Court on or before December 30, 1994.

21. The settling parties are the sole intended beneficiaries of this agreement, and all rights not expressly released are reserved.

UNITED STATES OF AMERICA

Dated: December 20, 1994

BY: Shelley R. Slade  
SHELLEY R. SLADE, ESQ.  
Attorney, Civil Division  
Department of Justice  
P.O. Box 261  
Ben Franklin Station

Dated:

12/20/94

By:

W. Mark Nebeker

W. MARK NEBEKER, ESQ.  
Assistant U.S. Attorney  
Office of U.S. Attorney for  
the District of Columbia  
Judiciary Center Building  
555 4th St., N.W.  
Washington, D.C.  
(202) 514-0742 7230

Dated:

12/20/94

By:

Eileen Boyd

EILEEN BOYD, ESQ.  
Assistant Inspector General  
for Civil Fraud and  
Administrative Adjudication  
Department of Health & Human  
Services  
330 Independence Ave., N.W.  
Washington, D.C. 20201  
(202) 619-0070

Dated:

\_\_\_\_\_

By:

Vincent J. Bamundo  
for

VINCENT J. BAMUNDO  
Director, Regional  
Administrative Support  
Center  
Department of Health & Human  
Services, Region II  
26 Federal Plaza, Rm. 41-118  
New York, N.Y.  
(212) 264-4300

GEORGE DENONCOURT

Dated: \_\_\_\_\_

By: Stuart Pierson / DuBois  
STUART PIERSON, ESQ.  
Davis Wright Tremaine  
1155 Connecticut Ave., N.W.  
Suite 700  
Washington, D.C. 20036  
(202) 508-6623

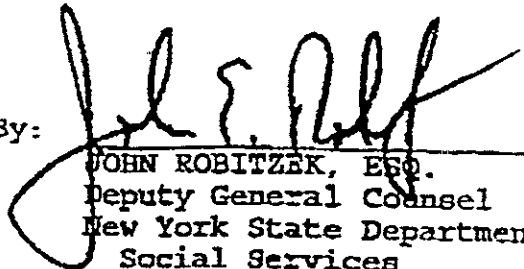
THE STATE OF NEW YORK

Dated: 12/20/94

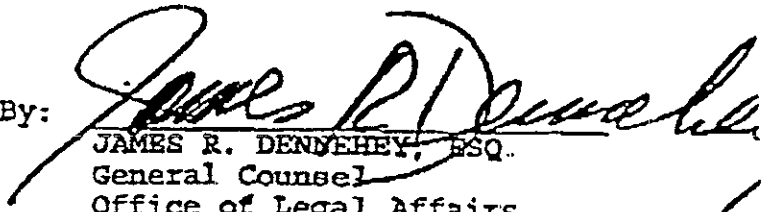
By: Alan A Kaufman  
ALAN KAUFMAN, ESQ.  
Assistant Attorney General  
New York State Department of  
Law  
State Capitol  
Albany, N.Y. 12224  
(518) 473-5099

Counsel for the New York State  
Department of Social Services,  
the Office of Human Resource  
Development, Robert  
Donahue, Carol Polnak, Will  
Zwink, Carol DeCosmo, Robert  
Hagstrom, State University of  
New York (SUNY) at Albany,  
SUNY Brockport, the State  
University Colleges at  
Buffalo, SUNY Central  
Administration, and the City  
University of New York.

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By:   
 JOHN ROBITZEK, ESQ.  
 Deputy General Counsel  
 New York State Department of  
 Social Services  
 40 North Pearl Street  
 Albany, New York 12243-0001  
 (518) 474-9502

Counsel for the New York State  
Department of Social Services

By:   
 JAMES R. DENNEHEY, ESQ.  
 General Counsel  
 Office of Legal Affairs  
 The Research Foundation of  
 State University of New York  
 P.O. Box 9  
 Albany, N.Y. 12201-0009

Counsel for the Research  
Foundation of the State  
University of New York

# **EXHIBIT V**

**Department of Health and Human Services**

**OFFICE OF  
INSPECTOR GENERAL**

**REVIEW OF TRAINING CONTRACT  
PRACTICES AT THE NEW YORK  
DEPARTMENT OF SOCIAL SERVICES**



**JUNE GIBBS BROWN**  
Inspector General

**FEBRUARY 1996**  
A-02-93-02006

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## ABBREVIATIONS

DOJ	Department of Justice
NYSDSS	New York State Department of Social Services
OIG	Office of Inspector General
ASMB	Assistant Secretary for Management and Budget
HCFA	Health Care Financing Administration
ACF	Administration for Children and Families
OHRD	Office of Human Resource Development
FFP	Federal financial participation
AFDC	Aid to Families with Dependent Children
SSI	Supplemental Security Income
USDA	Department of Agriculture
SUNY	State University of New York
RFSUNY	Research Foundation of State University of New York
SUC	State University College
CUNY	City University of New York
HHS	Department of Health and Human Services
DCA	Division of Cost Allocation
CIN	Common Identification Number
NYS	New York State
LDTF	Local District Training Fee
OCEAA	Office of Civil Fraud and Administrative Adjudication
OI	Office of Investigations
OMB	Office of Management and Budget
CFR	Code of Federal Regulations
RFCUNY	Research Foundation of City University of New York

## EXECUTIVE SUMMARY

This report contains the results of our review to assist the Department of Justice (DOJ) in its investigation of training contract costs claimed by the New York State Department of Social Services (NYSDSS) in the period April 1, 1983 through June 30, 1994. The objective of the joint review was to determine if there

**On December 14, 1992, a former NYSDSS employee filed a qui tam suit alleging NYSDSS submitted false claims to the Federal Government.**

was any validity to allegations that were made by a former NYSDSS employee in an action filed on December 14, 1992 under the qui tam provisions of the False Claims Act. In the qui tam suit, the former employee alleged that NYSDSS submitted false claims to the Federal Government for programs established by the Social Security Act and other Federal statutes. Two of the allegations included in the suit related to issues which had previously been reviewed and reported on in two prior audit reports issued by the Office of Inspector General (OIG).

As part of the review, OIG concluded that NYSDSS and several components of the State University of New York overbilled the Federal programs for the training of social service workers. Specifically, the review disclosed that NYSDSS:

- o Used third party in-kind contributions from private contractors, from April 1, 1983 to June 30, 1994, to meet the State's share of training expenditures.
- o Failed to credit administrative fees, collected from private training contractors in the period April 1, 1983 through June 30, 1994, against training costs charged to the Federal Government.
- o Included unallowable costs relating to the operation of a children's summer camp in the training contract costs it submitted to the Federal Government during 1989 and 1990.
- o Failed to offset the training costs charged to the Federal Government for training fees paid by private agencies for the period September 1, 1989 through June 30, 1994.

The review also disclosed that:

- o The State University College at Buffalo, the Research Foundation of State University of New York, and the City University of New York submitted inflated claims, in the period January 1, 1986 through December 31, 1993, under training contracts awarded by NYSDSS. And, NYSDSS passed on the inflated claims for reimbursement to the Federal Government

- o The NYSDSS and several components of the State University, for the period January 1, 1984 through June 30, 1993, used Federal training funds to finance the salaries and related costs of personnel hired under training contracts who performed nontraining functions.

On December 20, 1994, the State of New York signed a settlement agreement with DOJ, the OIG, and the Division of Cost Allocation. In return for a cash payment of \$26,970,000, the Federal agencies settled the above cited issues. In addition to the cash payment, the State

further agreed to: review its expenditure report for the quarter July 1, 1994 through September 30, 1994 and exclude similar costs which may have been included; amend its current procedures to ensure that any future costs of the type described will not be claimed; and not claim any legal or administrative costs incurred by New York State in its own investigation of the allegations contained in this suit or in the settlement of these matters.

**On December 20, 1994, NYSDSS settled the qui tam suit in return for a cash refund of almost \$27 million.**

Since the improper training contract practices found in the joint review of NYSDSS may also exist in varying degrees in other States, we recommend that the Assistant Secretary for Management and Budget (ASMB) alert the Department of Agriculture and Social Security Administration to the conditions found in this review. We are alerting the Health Care Financing Administration (HCFA) and the Administration for Children and Families (ACF) to these conditions. Further, we recommend that ASMB coordinate the efforts of the involved entities to ensure the States' compliance with regulations that cover the allocation and claiming of training contracts. Lastly, we recommend that ASMB also coordinate efforts by the involved entities to review future training expenditures claimed by NYSDSS, on a periodic basis, to ensure that it continues to adhere to the terms of its settlement agreement with DOJ.

In responding to our draft audit report (Appendix D), ASMB concurred with our findings and recommendations and agreed with our concerns that comparable conditions may also exist in varying degrees in other States. Accordingly, ASMB agreed to take quick action to ensure compliance with the our three recommendations.

The HCFA and ACF also responded to our draft report (Appendixes E and F) and indicated general concurrence with our findings and recommendations.

# INTRODUCTION

## Background

The New York State Department of Social Services (NYSDSS) has the responsibility for training Social Services personnel so that they will have the skill, knowledge, and proficiency to meet the stated objectives of the various Federal programs that it administers. This training encompasses both NYSDSS staff and staff of the local social services districts.

The NYSDSS conducts these activities through its Office of Human Resource Development (OHRD). This office oversees and coordinates the necessary functions to satisfy the NYSDSS' training goals. The OHRD provides direct liaison with all program areas (local, State, Federal), identifies training needs, and arranges for training resources to meet these needs. Additionally, it ensures that State and local staff are trained in management and administrative skills; maintains a recordkeeping system for all training; awards and administers training contracts; manages the Materials Resource Center and NYSDSS library; and develops appropriate evaluation systems for internal and external training activities.

While many training needs are met through internal resources, a substantial amount of training is provided through contracts with educational institutions, consultants, and other independent contractors and organizations.

**A substantial portion of training is provided through contracts awarded to educational institutions and independent contractors and organizations.**

Virtually all of the training contract costs incurred by NYSDSS were charged to Federal programs. During the period covered by the joint review, these Federal programs and their Federal financial participation (FFP) percentages for training, as contained in the applicable titles of the Social Security Act, were as follows:

- o IV-A - AFDC Income Maintenance (FFP 50%)
- o IV-D - Child Support Enforcement (FFP 64.85% to 70%)
- o IV-E - Foster Care and Adoption (FFP 75%)
- o XVI - SSI Disability Determination (FFP 100%)
- o XIX - Medical Assistance (FFP 50%, 75%, 90%)
- o XX - Social Services (Block Grant) (FFP 100%)

Training contract costs were also charged to the Food Stamp program, administered by the Department of Agriculture (USDA) (FFP 50%, 75%).

Training contract costs that are incurred at the State level are claimed through NYSDSS' Central Office Cost Allocation Plan. At the local level, costs that are incurred are claimed in accordance with the NYSDSS Manual Bulletin Transmittal 143b

The training contract costs were charged directly to programs, and the administrative costs incurred by OHRD were allocated to programs based on the dollar value of the training contracts. Currently, NYSDSS issues approximately 180 contracts each year with a value of about \$44 million. The NYSDSS also incurs approximately \$3.4 million annually for administrative costs.

In December 1992, a former employee of NYSDSS filed a Complaint under the qui tam provisions of the False Claims Act. The Complaint named, among others, the State of New York, NYSDSS, OHRD, State University of New York (SUNY) Albany, SUNY Brockport, SUNY (Central Administration), Research Foundation of State University of New York (RFSUNY), State University College at Buffalo (SUC Buffalo), City University of New York (CUNY), and five NYSDSS OHRD employees as defendants. The Complaint alleged that the named entities and persons had submitted false claims, or caused the submission of false claims, for Federal funds available for training of social service workers under the Social Security Act in violation of the False Claims Act. Specifically, the former employee alleged in the Complaint that:

- o The training contractors would, at the encouragement of State officials, inflate their budgets and vouchers submitted for reimbursement, and the State would pass on the inflated amounts in claims to the Federal Government.
- o The training contractors paid NYSDSS an administrative fee of 5 percent to cover administrative costs. This fee represented 5 percent of the total value of the contract. This fee was improperly passed on to the Federal Government by inflating the vouchers submitted by the training contractors.
- o The NYSDSS would receive income such as fees collected from trainees, the sale of training materials, and donations and sale of copyrights. This revenue was not properly credited to the Federal Government as required.
- o To facilitate the training cost inflation scheme and the related scheme concerning the administrative fee, State officials conspired with contractors who would participate in the inflation of budgets and vouchers to assure that only cooperating contractors would receive contracts.
- o Contractors would receive contract extensions and budget modifications to permit expenditure of all budgeted funds even after the training services had been delivered
- o Lastly, by operating the schemes described above, NYSDSS submitted false and fictitious claims to the Federal Government.

Prior to the initiation of the Department of Justice (DOJ) investigation, the Office of Inspector General (OIG) issued two final audit reports on issues relating to training costs claimed by NYSDSS in the period April 1, 1987 through March 31, 1991.

Prior to the initiation of the DOJ investigation, OIG issued final audit reports which related to issues included in the qui tam suit.

Our earlier reviews were performed at the request of the Department of Health and Human Services (HHS), Division of Cost Allocation (DCA). In our two prior audits, we partially examined two issues which related to the allegations included in the qui tam suit. Specifically, we reviewed NYSDSS use of third party contributions to satisfy the State's share of training costs and the 5 percent fee NYSDSS charged to training contractors.

In our two earlier audit reports (CIN: A-02-91-02002 dated July 1, 1992 and CIN: A-02-92-02007 dated November 9, 1993), we recommended financial adjustments totaling \$6.0 million (\$3.9 million Federal share) relating to third party in-kind contributions and the 5 percent fee. The findings included in our earlier reports which related to these two issues were resolved in the settlement of the qui tam suit, and our prior recommended Federal share adjustments of \$3.9 million were included in the refund of \$26,970,000.

### Scope of Review

In our current review we expanded our previous review of third party in-kind contributions and the 5 percent administrative fee to cover such costs that were claimed during the period April 1, 1983 through June 30, 1994. Further, we reviewed additional issues related to training fees by private agencies and allegations related to inflated claims submitted by several components of SUNY and other contractors.

The primary objective of our review was to lend assistance to DOJ in its review of the validity of the allegations included in the qui tam suit filed by the former NYSDSS employee in December 1992. In order to accomplish our objective, we:

- Participated in meetings held with the former employee and his attorney to discuss the allegations included in the suit and the documents which were submitted by the former employee in support of his allegations.
- Met with representatives from the New York State (NYS) Office of Inspector General and discussed and reviewed working papers relating to an earlier review performed by that office of certain aspects of OHRD's training contract practices.
- Met with NYSDSS' internal auditors to discuss their prior internal audit reviews of OHRD and a number of training contractors.

The OIG lent assistance to the DOJ investigation.

We also obtained copies of portions of their audit working paper files for follow on work by our staff.

- Held discussions with representatives from RFSUNY regarding allegations raised by a former employee of SUC Buffalo. We examined working papers related to an internal review which was made of the allegations and copied portions of the working papers for follow on work.
- Audited the total amount of training contract costs that were claimed by NYSDSS during the period 1983 through 1993. This included analyzing both the charging instructions for all training contracts and NYSDSS' methodology for allocating contract and administrative costs to benefiting programs.
- Audited the Training Management and Evaluation Fund, the Local District Training Fee (LDTF) special revenue account, and analyzed NYSDSS' procedure for using third party contributions as its share of training costs.
- Examined the propriety of OHRD's administrative costs and training expenditures claimed under contracts NYSDSS awarded to eight private and four public contractors. We provided narrative summaries of findings and related recommendations to DOJ.
- Participated with OIG's Office of Investigations (OI), Office of Civil Fraud and Administrative Adjudication (OCFAA), and DOJ in interviews with and depositions of training contractor personnel and current and former NYSDSS employees. We assisted OI, OCFAA, and DOJ in seeking evidence from contractors and State officials.
- Determined whether the Federal Government received proper credit for refunds and reimbursements from contractors.
- Held discussions with cognizant NYS and Federal officials regarding training policies, procedures, and regulations.
- Calculated the single damages for seven issues raised in the civil fraud investigation which covered the period April 1, 1983 through June 30, 1994. The seven issues included:
  1. Unallowable costs resulting from private in-kind contributions or donations of the State match from 1983 through June 30, 1994.
  2. Unallowable costs resulting from the 5 percent administrative fees collected from private contractors for the period 1983 through June 30, 1994.

3. Unallowable costs resulting from the failure to credit training fees revenue received from provider agencies to the Federal Government from September 1, 1989 through June 30, 1994.
  4. Unallowable costs resulting from the hiring of on-site contract staff for the period January 1, 1984 through June 30, 1993, expressed both as an absolute dollar figure and as a percentage of all federally reimbursed contract expenditures associated with on-site contract staff.
  5. Unallowable costs related to RFSUNY's internal review of SUC Buffalo.
  6. Unallowable costs resulting from the improper claiming of a special summer program entitled, "Project Liberty."
  7. Unallowable costs resulting from the improper claiming of direct and indirect costs for a training contract awarded to CUNY.
- Calculated the audit and investigative costs of the joint review incurred by HHS and DOJ. We also calculated an estimate of the interest income earned by NYSDSS through its short term investment pool on costs which were overbilled to the Federal Government.

Our review was conducted in accordance with generally accepted governmental auditing standards, except for certain financial projections calculated at the request of DOJ that would not fully satisfy these standards. A review of NYSDSS' internal control structure was performed as part of our two earlier audit reviews, and our related comments on internal controls are contained in our earlier issued audit reports. We did not expand on our earlier examination of NYSDSS internal control structure since the primary objective of this review was to determine the validity of the allegations included in the qui tam suit. Our audit field work was performed primarily at NYSDSS and RFSUNY in Albany, New York during the period January 1991 to November 1994.



## FINDINGS AND RECOMMENDATIONS

Based on a audit review and investigation of the allegations contained in the former NYSDSS employee's qui tam suit, we concluded that NYSDSS submitted false claims in order to obtain Federal funds made available under the Social Security Act for the training of social service workers. The review team found seven areas which implicated the civil False Claim Act. The seven areas are discussed below.

**The OIG concluded NYSDSS made false claims to the Federal Government.**

The review team found seven areas which implicated the civil False Claim Act. The seven areas are discussed below.

### Third Party In-Kind Contributions

The training contracts awarded by NYSDSS in the period April 1, 1983 to June 30, 1994 included provisions which required training contractors to cost share on the average 12 to 33 percent of the costs of the training provided. To illustrate, if a contractor was awarded a \$100,000 contract to provide training to social service employees, and the terms of the contract required the contractor to cost share 25 percent, then NYSDSS would only be required to reimburse the contractor \$75,000. The NYSDSS referred to the required cost sharing provisions included in its contract awards as "third party in-kind contributions." In the above example, the contractor would bill NYSDSS for \$100,000 of its incurred costs. And, although NYSDSS would only reimburse the contractor \$75,000, NYSDSS would include \$100,000 of contractor costs in its claim submitted to the Federal Government. The NYSDSS explained this practice by claiming that its contractors were voluntarily contributing to the State's share of training social service employees. In the above example, the contractor was expected to absorb the remaining \$25,000 of costs incurred. However, as will be discussed below, this did not occur.

In two prior OIG audits of NYSDSS training activities (CIN: A-02-91-02002 and CIN: A-02-92-02007), we found that NYSDSS was using the training contractors' in-kind contributions to meet the State's share of training costs claimed under titles IV-A, IV-D, IV-E, and XIX.

**The NYSDSS used training contractor in-kind contributions to meet its share of training costs.**

This practice was not in compliance with Federal regulations and program directives with regard to the cost sharing provided by private contractors (i.e., contractors which were not an agency of the State such as SUNY). Consequently, in our two earlier reports, which covered the period April 1, 1987 through March 31, 1991, we recommended adjustments totaling approximately \$4.6 million (Federal share \$3.0 million). The amount recommended for adjustment represented all the cost sharing expenses provided by private contractors which NYSDSS had claimed to meet its share of training costs in the period we had audited. In our earlier reviews, we did not recommend adjustments to the cost sharing

provided by public contractors because they were not third parties. They were State entities which were generally able to document the cost sharing by claiming indirect costs computed at rates which were less than those negotiated with DCA.

As part of our joint review with DOJ, we examined the propriety of training expenditures which were claimed under contracts that NYSDSS awarded to eight private and four public (State and City University campuses) contractors.

We determined that NYSDSS allowed contractors to inflate their claimed training expenditures in order to recover the cost sharing expenses which were allegedly incurred. Training contractors advised us that NYSDSS employees told them there were various "methods" they could use to recover their true costs and thus contract with NYSDSS without "losing money." We found that private contractors inflated their costs to cover required cost sharing in a variety of ways. Several examples of the various inflation methods employed by contractors follow:

**The NYSDSS allowed training contractors to inflate costs to cover their cost sharing requirement.**

- o Allocating more than 100 percent of actual personnel and fringe benefit costs to training contracts.
- o Claiming duplicate costs. Contractors would claim the same training costs on two contracts with overlapping performance periods.
- o Claiming rental and user rates for equipment owned.
- o Claiming undocumented costs. For example, contractors claimed "in-house" publication costs for which no documentation existed.
- o Claiming an inflated value for consultants who were paid less. Also, contractors claimed indirect and fringe benefit costs at inflated rates or at rates which could not be documented.

Based upon additional work performed, we concluded that private training contractors did not actually incur any of the cost sharing expenses which NYSDSS claimed in the period April 1, 1983 through June 30, 1994. As a result, NYSDSS was asked to refund \$9,873,944 (Federal share \$6,557,082) it had claimed under the titles IV-A, IV-D, IV-E, and XIX programs during that period. For a breakdown of this amount by Federal program, see Appendix A. The NYSDSS discontinued using third party contributions provided by private contractors to meet its share of training costs effective July 1, 1994.

**As of July 1, 1994, NYSDSS discontinued the practice of using private contractor in-kind contributions to meet its share of training costs.**

The NYSDSS settled this issue on December 20, 1994 (see Appendix B - Copy of Settlement Agreement) and paid double damages of \$13,114,164 to the Federal Government.

### **Administrative Fee**

In addition to the amounts paid by NYSDSS to the contractors, the training contracts awarded by NYSDSS in the period April 1, 1993 to June 30, 1994 also included a provision which required training contractors to pay NYSDSS a fee to cover the State's share of administrative costs. The fee was assessed at 5 percent of the total contract amount. To illustrate, if a contractor provided training to social service employees at a cost of \$100,000, the terms of the contract awarded by NYSDSS required the contractor to pay NYSDSS a fee of \$5,000 (\$100,000 x 5 percent).

In our two previous audits (CIN: A-02-91-02002 and CIN: A-02-92-02007), which covered the period April 1, 1987 through March 31, 1991, we determined that NYSDSS did not treat the 5 percent fee charged to private contractors as an applicable credit in accordance with Office of Management and Budget (OMB) Circular No. A-87. Consequently, we recommended adjustments totaling \$1.4 million (Federal share \$881,658). Further, we recommended that in the future NYSDSS apply the 5 percent fee as an applicable credit to the total OHRD administrative costs prior to claiming for Federal share.

**The NYSDSS did not apply the 5 percent administrative fee assessed to training contractors as a credit to Federal programs.**

As part of our joint review with DOJ, we examined training expenses claimed on selected contracts. We determined that NYSDSS encouraged contractors to inflate their claimed training expenditures in order to recover the 5 percent administrative fee which they were assessed. Training contractors advised us that NYSDSS employees told them to use the same methods as described for "Third Party In-Kind Contributions" to recover the fee.

Based upon additional work performed, we concluded that private contractors inflated their training expenditures to cover their 5 percent fees in the period April 1, 1983 through

**The OIG concluded private contractors inflated claims to cover the 5 percent fee.**

June 30, 1994. As a result, NYSDSS improperly claimed \$3,678,454 and received Federal funds of \$2,249,474 in that period. For a breakdown of this amount by Federal program, see Appendix A. The NYSDSS corrected the application of the 5 percent fee received from private contractors effective July 1, 1994.

The NYSDSS settled this issue (See Appendix B - Copy of Settlement Agreement) and paid \$4,064,336 to the Federal Government. This amount was based on a multiplier of 1.81 percent of single damages that was voluntarily agreed to as part of the settlement.

### **Project Liberty**

The NYSDSS awarded contract No. C-002763 to Hudson Valley Community College (a component of SUNY) in March 1988. Under the terms of this contract, SUNY was to provide general management and systems training intended to enhance the job skills of NYSDSS employees. The period of performance of the originally issued contract agreement was from April 1, 1988 to May 31, 1989, and the costs for providing the training were initially estimated to be \$449,258. Before the original contract term expired in May 1989, NYSDSS extended the period of performance to March 31, 1990, increased the estimated cost by \$335,270, and amended this contract to include the operation of a program titled, "Project Liberty." By amending this existing contract, NYSDSS was able to bypass the formal request for proposal and bid process and award the project to this contractor.

The NYSDSS charged all the expenditures relating to "Project Liberty" to the Federal Government as training expenses in Fiscal Year 1990. Based on our review, we determined that "Project Liberty" was begun as a summer residential program for disadvantaged youth and later was

expanded as an academic program throughout the school year. We concluded that the expenses relating to "Project Liberty" were not related to the training of social service employees and NYSDSS improperly claimed \$251,243 and improperly received \$136,465 in Federal funds for the "Project Liberty" program.

**Project Liberty was not related to training, and all costs were improperly claimed.**

The NYSDSS did not dispute our conclusion and settled this issue by paying double damages of \$272,930 to the Federal Government (see Appendix B - Copy of Settlement Agreement). For a breakdown of this amount by Federal program, see Appendix A.

## State University College at Buffalo

Our review disclosed that training contracts awarded to RFSUNY by NYSDSS were being audited by RFSUNY's internal audit group. Specifically, RFSUNY's internal auditors were examining six NYSDSS contracts awarded to SUC Buffalo during the period October 1985 through December 1993. The objective of the internal audit review was to address written complaints from a former SUC Buffalo employee concerning improper practices on training contracts awarded by NYSDSS. The results of RFSUNY's internal review were provided to us.

We tested the reliability of the internal auditors' working papers and determined that we could rely on the audit work they performed. The internal auditors found a number of problems with costs that SUC Buffalo had charged directly to the NYSDSS training contracts. To illustrate,

the internal auditors identified 15 SUC Buffalo janitorial and custodial employees who were improperly classified as clerical staff. The salary and related costs of the 15 employees were charged as training expenses on the contracts. The internal auditors also found 36 other SUC Buffalo employees who were not performing training functions. Yet, their salaries and related expenses were also claimed on the training contracts.

**Salary and related costs for janitors and custodians were claimed as training expenses.**

Also, RFSUNY internal auditors found that seven equipment items charged to the NYSDSS training contracts could not be located, and 35 other items acquired with training contract funds were not used for training purposes. The internal auditors also noted that 17 of the 35 items were physically located at sites other than on the SUC Buffalo campus.

**Equipment acquired with training contract funds was not used for training purposes.**

We calculated that RFSUNY erroneously claimed \$742,390 for salaries and related fringe benefit and indirect costs and \$63,867 for equipment costs under the NYSDSS training contracts performed by the SUC Buffalo campus. Additionally, we concluded that RFSUNY had improperly received \$529,327 in Federal funds as a result of its erroneous claims. For a breakdown of this amount by Federal program, see Appendix A.

The NYSDSS settled this issue (see Appendix B - Copy of Settlement Agreement) and paid double damages of \$1,058,654 to the Federal Government.

## Private Provider Training Fees

The NYSDSS charged provider agencies a fee for their staff to attend training sessions. The revenue received from the training fees was deposited into the LDIF special revenue account, and was not reported to the Federal Government. Instead, NYSDSS used the fees to pay for its share of the training contract costs that were claimed under Social Security titles IV-A, IV-D, IV-E, IV-F, XVI, XIX, and XX as well as title 7, U.S. Code, during the period September 1, 1989 through June 30, 1994.

The NYSDSS advised us that it considered the fees collected from provider agencies to be program income as defined in OMB Circular No. A-102, Attachment E. Further, NYSDSS advised that section E.5 of Circular No. A-102 permitted it to use the program income to finance the State's share of the training contract costs incurred.

Our review of section E.5 indicated that NYSDSS was allowed to use the revenue received from training fees to finance the State's share of training contract costs only if it had obtained the prior approval of the Federal sponsoring agencies, which it had not. Moreover, the regulations contained in 45 CFR 74.42 provide that the fees must be used to offset costs unless the Federal granting agency had approved the use of the fees either to meet cost-sharing requirements of the program or for costs which were in addition to the allowable costs of the program.

We discussed this issue with representatives of the Administration for Children and Families (ACF). The ACF advised us that it had not approved or permitted NYSDSS to use provider agency fees to finance the nonfederal share of the allowable costs of the programs. It was ACF's position that the provider agency training fees collected by NYSDSS should therefore be used as an offset to the total allowable costs to determine the net allowable costs on which the State may then make its claim in accordance with the appropriate Federal share rate.

**The NYSDSS' use of provider agency fees to finance the nonfederal share of program costs was not approved by ACF.**

In addition to determining that NYSDSS had not complied with applicable regulatory criteria, the investigation revealed that NYSDSS deliberately failed to notify Federal sponsoring agencies of the revenue collected from provider agencies. It was evident that NYSDSS disregarded program income regulations. Accordingly, NYSDSS erroneously claimed \$1,120,154 and improperly received Federal funds of \$500,569 for the period September 1, 1989 through June 30, 1994. For a breakdown of this amount by Federal program, see Appendix A. The NYSDSS corrected its method of accounting for provider agency training fees effective July 1, 1994.

The NYSDSS settled this issue (see Appendix B - Copy of Settlement Agreement) and paid \$904,425 to the Federal Government. This amount was based on a factor of 1.81 of single damages.

### **The Research Foundation of the City University of New York (RFCUNY)**

The NYSDSS awarded contract No. C-003732 to RFCUNY to provide training to State and social services district staff on legal issues, including fair hearing related matters. The contract agreement contained an approved budget of \$1,410,930 for the period October 1, 1989 through March 31, 1993.

We reviewed the \$941,071 of expenses RFCUNY claimed under this contract in the period October 1, 1989 through November 30, 1991. The claimed indirect costs on this contract were based on the on-campus indirect cost rate of 71.4 percent, which RFCUNY negotiated with

**The RFCUNY should have claimed indirect expenses at a lower indirect cost rate.**

DCA for agreements performed at its Queens College campus. However, because more than 50 percent of the direct costs charged to the contract were incurred off-campus, the claimed indirect costs should have been based on the off-campus indirect cost rate of 42.5 percent, which RFCUNY negotiated with DCA. As a result, RFCUNY overclaimed \$148,756 of indirect costs. Our review also disclosed that \$38,834 of trainee travel expenses and related indirect costs of \$16,505 were unnecessary contract expenditures.

Overall, \$204,095 of training expenditures were improperly claimed under contract No. C-003732 for the period we reviewed. Of that amount, \$136,744 was reimbursed by the Federal Government. For a breakdown of this amount by Federal program, see Appendix A.

The NYSDSS settled this issue on December 20, 1994 (see Appendix B - Copy of Settlement Agreement) and paid \$247,068 to the Federal Government. This amount was based on a factor of 1.81 of single damages.

### **On-Site Training Contract Staff**

We found that certain employees, who were hired to work under training contracts awarded to RFSUNY, were working in NYSDSS offices throughout the State. The NYSDSS referred to these RFSUNY training contract employees as "on-site" NYSDSS contract staff. We asked

**Employees hired under training contracts awarded to SUNY actually worked on-site in NYSDSS offices.**

RFSUNY to provide us with a listing of all contract employees who worked on-site at NYSDSS offices during the past 10 years. The RFSUNY subsequently furnished us a list of 156 employees who were placed in NYSDSS offices during the period January 1, 1984 through June 30, 1993. The salary and related costs of the 156 employees were charged entirely to training contracts NYSDSS awarded to SUNY Albany and SUC Buffalo.

In order to determine if the on-site contract employees were actually performing training under the contracts where their salaries were charged, 40 of the on-site staff were interviewed. We were able to determine the activities performed by all 40 staff during the period they were charged to the training contracts. In addition, based on conversations with the 40 individuals interviewed, we were also able to obtain information concerning the duties performed by another 44 NYSDSS on-site contract staff.

The interviews showed that most were often performing duties other than training or they were performing no training at all. These activities included:

**On-site contract staff performed duties other than training.**

- o Student interns conducting research on Medicaid-related issues. Interns were responsible for the analysis and resolution of questions regarding recipient and provider litigation patterns, and the analysis, refinement, and development of Medicaid systems. In addition, they focused on the analysis and resolution of Medicaid program management problems in such areas as cost containment, cost/benefit analysis of services and eligibility policies, and other organizational policy and management issues.
- o Contract staff involved in preparing procedural manuals. Specifically, staff were involved in the development of the Foster Care Manual for New York City. Issues in the manual included time frames, review process, practice concepts, and project oversight.
- o Contract staff discussing legislative developments. Certain staff were responsible for refining NYSDSS' computer system and making recommendations for redesign. Their duties included analyzing both new and existing computer systems to ensure the data generated was in compliance with Federal regulations.
- o Regional contract staff monitoring and evaluating local district operations. Staff were given a certain number of local district sites to look over the existing equipment and room configurations. A site packet was prepared, new equipment purchased and installed, and ultimately, the local staff was shown how to use the new equipment.
- o The NYSDSS computer hotline staff providing assistance related to hardware and other computer problems. We believe the hotline employees fixed problems as opposed to actually performing training.



For the 84 NYSDSS on-site employees whose work activities were reviewed, we concluded that 47 did not perform any training, 30 performed training part of the time, and the remaining 7 trained 100 percent of the time. We estimated the percentage of effort and the related costs that did not benefit the training contracts and calculated that, for the period January 1, 1984 through June 30, 1993, NYSDSS erroneously claimed \$7,772,114 for salaries and related costs. Of that amount, NYSDSS improperly received Federal reimbursement of \$4,045,029. For a breakdown by Federal program, see Appendix A.

The NYSDSS settled this issue (see Appendix B - Copy of Settlement Agreement) and paid \$7,308,533 to the Federal Government. This amount was based on a factor of 1.81 of single damages.

## SUMMARY AND RECOMMENDATIONS

On December 20, 1994, the State of New York signed a settlement agreement with DOJ, OIG, and DCA. In return for a cash payment of \$26,970,000, the Federal agencies settled the above cited issues. In addition to the cash payment, the State further agreed to: review its expenditure report for the quarter ended September 30, 1994 and exclude similar costs which may have been included; amend its current procedures to ensure that any future costs of the type described will not be claimed; and not claim any legal or administrative costs incurred by the State in its own investigation of the allegations contained in this suit or in the settlement of these matters.

### Recommendations

The Assistant Secretary for Management and Budget (ASMB) has been assigned - responsibility to negotiate all public assistance cost allocation plans. This responsibility also includes resolution of all government-wide accounting issues that impact public assistance programs. All administrative costs (direct and indirect) are normally charged to Federal programs by implementing the public assistance cost allocation plan. Therefore, since the improper training contract practices found in our joint review of NYSDSS may also exist in varying degrees in other States, we recommend that ASMB:

- Alert other departments administering training contracts to the conditions found in this review.
- Advise and coordinate the efforts of ACF, the Health Care Financing Administration, USDA, and the Social Security Administration with regard to the need to more closely monitor and coordinate States' compliance with regulations that cover the allocation and claiming of training contract costs. We believe that, as a minimum, other States should be queried as to whether the improper practices identified in the review of NYS have been adopted elsewhere. To assist in this review, we have initiated a nationwide review of training contract costs. Our nationwide review will include the following six States: New Jersey, Florida, Illinois, Oklahoma, Missouri, and California. The objective of the nationwide review will be to determine the appropriateness of training contract costs charged to Federal programs in the selected States.
- Review future training expenditures claimed by NYSDSS, on a periodic basis, to ensure that it continues to adhere to the terms of its settlement agreement with DOJ.

## **ASMB Response**

In a memorandum dated September 8, 1995, ASMB agreed with our conclusions and indicated it shared our concerns that comparable conditions may also exist in varying degrees in other states. Accordingly, ASMB stated quick action would be taken to ensure compliance with the report's three recommendations. Specifically, ASMB stated DCA will:

- Alert other Federal agencies which also fund training contracts to the conditions disclosed in our report.
- Advise and coordinate efforts of HHS Operating Divisions and other Federal agencies to more closely monitor and coordinate States' compliance with regulations affecting the allocation and claiming of training contract costs.
- Review future training expenditures claimed by NYSDSS, on a periodic basis, to ensure continued compliance with the terms of the settlement agreement.

## **HCFA Response**

The HCFA concurred with our findings and recommendations.

## **ACF Response**

The ACF concurred with our findings and recommendations.

The ACF also offered a general comment indicating it would be beneficial to ACF in carrying out its responsibility to monitor States in the administration of individual programs if our report detailed improper claims filed by the State under titles IV-A, IV-D, IV-E, and XX on a program-by-program basis. We discussed this with ACF officials who recognized that we did not perform a program audit of training contracts to assess whether the training was proper or relevant. Therefore, we did not detail the improper claims on a program-by-program basis.

In addition, ACF made two specific comments on third party in-kind contributions. The first related to ACF's interpretation of the finding, whereby officials understood the report to imply that training contract provisions requiring contractors to pay the State amounts in addition to the reasonable and fair market values of the services provided would be acceptable except for the fact that contractors failed to actually provide "contributions." During a discussion with ACF officials, we explained such a funding methodology was not acceptable. In fact, the report stated, "This practice was not in compliance with Federal

regulations and program directives with regard to the cost sharing provided by private contractors....."

The second specific comment was made in reference to the example we provided in the report under Third Party In-Kind Contributions. The example illustrated a provision requiring a contractor to cost share under a training contract and the way in which NYSDSS subsequently reimbursed the contractor and claimed the costs to the Federal Government. The ACF wanted the example clarified to show that the Federal Government would only share in the adjustment amount and not the total award.

We contacted ACF officials and explained that our methodology for calculating the adjustment did agree with theirs and that the example only illustrated the terms of the training contracts. The ACF officials were satisfied with our explanation and agreed that the report should not have to be changed.

# **EXHIBIT W**

RC03: Therapeutic Crisis Intervention  
Residential Child Care Project, Cornell University

**BREAKDOWN OF COURSES  
EXPENSES**

	TxT	IAB	VP&AR TA	SPR
PERSONNEL	\$60,423	\$27,465	\$109,859	\$9,887
FRINGE	\$22,018	\$10,008	\$40,033	\$3,603
CASUAL EMPLOYEES	\$11,250		\$1,875	\$0
FRINGE	\$4,100		\$683	\$0
AV EQUIPMENT	\$7,050	\$3,750	\$0	\$1,170
EASEL PADS	\$165	\$135	\$0	\$0
PADS/PENCILS	\$94	\$54		\$0
EVAL SUPPLIES	\$748	\$432		\$0
STAFF	\$11,406	\$11,544	\$68,697	\$0
TRAVEL				
CONFERENCE TRAVEL	\$867	\$501	\$2,783	\$464
CONSULTANT FEE and TRAVEL	\$0	\$6,000	\$0	\$25,000
PRINTING	\$14,025	\$1,620	\$3,000	\$0
POSTAGE/SHIPPING	\$1,422	\$821	\$4,563	\$760
REPRODUCTION OF ICI VIDEO	\$8,415	\$0	\$0	\$0
BOOKS/JOURNALS	\$622	\$283	\$1,131	\$102
REPRINT PERMISSION	\$187	\$85	\$339	\$31
TRAINING SPACE RENTAL	\$26,750	\$10,250	\$0	\$4,500
TRAINEE COSTS	\$71,783	\$0	\$0	\$0
SUBTOTAL	\$241,323	\$72,948	\$232,964	\$45,517
FACILITIES & ADMINISTRATIVE COSTS	\$148,559	\$44,907	\$143,413	\$28,020
ADMINISTRATION	\$29,407	\$13,367	\$53,468	\$4,812
<b>GRAND TOTAL</b>	<b>\$419,289</b>	<b>\$131,221</b>	<b>\$429,844</b>	<b>\$78,349</b>

ADMINISTRATION	
PERSONNEL+TEMP	\$28,131
ASSOCIATED FRINGE	\$10,251
EQUIPMENT	\$3,400
FAX LEASE	\$450
OFFICE	\$1,083
SUPPLIES	
SOFTWARE	\$3,120
OFFICE FURNITURE	\$2,500
ADMINISTRATIVE STAFF TRAVEL	\$238
OTHER COSTS	
NETWORK	\$2,748
COSTS	
PHONE	\$6,312
PHOTOCOPY	\$8,500
OFFICE RENT ITHACA	\$0
EQUIP. REPAIR, MAINTENANCE, & INSURANCE	\$3,250
GENERAL OUTSIDE SERVICES	\$4,452
SUBTOTAL	\$74,435
FACILITIES & ADMINISTRATIVE COSTS	\$43,729
<b>TOTAL ADMINISTRATION</b>	<b>\$118,164</b>

# **EXHIBIT X**



Office of Children and Family Services

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New York State  
Child and Family Services Review  
Program Improvement Plan

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**Eighth Quarterly Report**  
(January 14, 2005 – April 13, 2005)

**Date of Report: May 13, 2005**



John A. Johnson  
Commissioner

52 Washington Street  
Rensselaer, NY 12144



## I. Introduction

This is the eighth and final quarterly report for the Child and Family Service Review (CFSR) Program Improvement Plan (PIP). The 7th quarterly report was sent to ACF on February 11, 2005. New York's PIP was submitted to ACF in April 2002 and was approved by ACF effective April 14, 2003. New York began the work contained in the PIP on July 1, 2002 while waiting for federal approval.

The PIP provides New York State with a blueprint for its continuous quality improvement of the administration of child welfare services and practices. Through targeted strategies and action steps, the New York State Office of Children and Family Services (OCFS), the fifty-eight local departments of social services, the St. Regis Mohawk Tribe, and the agencies with which they contract for services, address the child welfare outcomes and performance indicators found not to be in substantial conformity with the 2001 Administration for Children and Families (ACF) Child and Family Services Review standards.

New York is a state supervised, locally administered system and, as such, it is presented with special challenges in responding to the Federal Children and Family Services Review (CFSR). The OCFS CFSR PIP development and implementation process is an opportunity to join with local departments of social services, New York City's Administration for Children's Services, voluntary agencies, the federally recognized tribes and other child welfare stakeholders in order to:

- assess the review findings;
- identify factors contributing to performance or to the report findings;
- identify current initiatives upon which to build;
- identify strategies and action steps to address the factors contributing to performance;
- set goals for improved performance; and
- shape strategies to assess the effectiveness of the PIP.

OCFS views the implementation of the CFSR PIP as an opportunity to continue to strengthen the areas of child welfare practice and programs that are in need of improvement and to build on the many strengths present in OCFS, local district and agency practices and programs. OCFS embraces this opportunity for partnership in order to foster creative thinking and to forge a common focus on achieving improvements in child safety, permanency and well-being. It does so in full cooperation with the Administration for Children and Families, ACF Region II staff and in conformance with the federal regulations (45CFR 1355 (a) (1) (i)) governing this process.

### Format of the Quarterly Report

The eighth quarterly report follows the federally recommended format for quarterly reporting, supplemented by a brief narrative description of the work done to achieve each benchmark. The action steps and benchmarks that were achieved by the eighth quarter are **BOLDED** in the matrix. Following each national standard/item in the matrix, the action step and benchmark are repeated, the status provided, and the narrative regarding the achievement follows. Information provided in New York's first through seventh quarterly reports is included in this report, but is not bolded.

National Standard - Incidence of Child Abuse and/or Neglect in Foster Care

Goal/Negotiated Measure/Percent of Improvement	Action Steps	Method of measuring Improvement	Benchmarks Toward Achieving Goal	Benchmark Dates	Goals Dates
<p>Reduce the rate of the incidence of child abuse and/or neglect in foster care, as measured by the National Standard, from 1.14% to 1%</p> <p><b>Goal achieved (.87% in 2002)</b></p>	<p>Action Step 1.15: New York will reduce the incidence of child abuse and neglect in foster homes by developing and distributing a model foster parent manual to local districts and voluntary agencies. Districts and agencies will provide this manual to foster parents to provide clarity regarding the roles, responsibilities, and expectations of foster parents.</p>	<p>Semi-Annual State data regarding the incidence of abuse/neglect in foster care (From NCANDS)</p>	<p>Foster parent manual completed.</p> <p>Multiple hard copies of the Manual, as well as a CD copy, will be distributed to every local district and voluntary agency. The Manual will also be posted on OCFS' web site. Follow-up will be conducted with a sample of 10 districts, New York City, and 15 agencies to verify their distribution of the Manual to foster parents.</p>	<p>Projected: End of Quarter 2 Actual: Completed by End of Quarter 1</p> <p>Projected: End of Quarter 3 Actual: Completed by end of Quarter 2</p>	
<p>Reduce the rate of the incidence of child abuse and/or neglect in foster care, as measured by the National Standard, from 1.14% to 1%</p> <p><b>Goal achieved (.87% in 2002)</b></p>	<p>New York will enhance the ability of foster parents, including kinship foster parents, to provide safe, stable, permanency focused placements through the following action step:</p> <p>Action Step 1.16: Develop a foster parent training and support needs assessment instrument to be distributed to districts and agencies. The completed needs assessment will be reviewed and used as a basis for training and technical assistance resources to be provided to districts, agencies and foster parents to address the needs identified. This will occur in at least one district and one agency in each of the 6 regions (which includes New York City.)</p>	<p>Semi-Annual State data regarding the incidence of abuse/neglect in foster care (From NCANDS)</p>	<p>a. Initial meeting with training partners completed.</p> <p>b. Input from foster parents, local districts and foster care agencies obtained.</p> <p>c. Needs assessment instrument developed and tested.</p> <p>d. Needs assessment completed.</p> <p>e. Training and technical assistance plan developed.</p>	<p>a. Projected: End of Quarter 1 Actual: Completed by End of Quarter 1</p> <p>b. Projected: Begin in Quarter 2; Complete by End of Quarter 3 Actual: Completed in Quarter 1</p> <p>c. Projected: End of Quarter 4 Actual: Completed by end of Quarter 2</p> <p>d. Projected: End of Quarter 4 Actual: Completed by end of Quarter 2</p> <p>e. Projected: End of Quarter 5 Actual: Completed by end of Quarter 5</p>	<p>End of Qtr 6</p>

<p>Reduce the rate of the incidence of child abuse and/or neglect in foster care, as measured by the National Standard, from 1.14% to 1%</p> <p><b>Goal achieved (.87% in 2002)</b></p>	<p>New York will strengthen the crisis intervention and de-escalation techniques used in congregate care settings to decrease incidence of maltreatment during crisis intervention through the following action steps:</p> <p><u>Action Step 3.1b:</u> OCFS will work through a contractor to deliver training in Therapeutic Crisis Intervention (TCI) (designed to teach crisis intervention and de-escalation techniques) to voluntary agency child care staff and local district group home staff.</p> <p><u>Action Step 3.1c:</u> A national and Statewide assessment of the use of the single person restraint techniques will be conducted and the field will be notified of future policy direction that is in the best interest of children.</p> <p><b>(Amendment 2-11/29/04)</b></p>	<p>Semi-Annual State data regarding the incidence of abuse/neglect in foster care (From NCANDS)</p>	<p>f. Training and technical assistance provided to at least one district and one agency in each of the 6 regions (which includes New York City) in addressing the needs identified.</p> <p>a. 10 Five-day train-the-trainer sessions with a total of 100-170 individuals trained.</p> <p>b. 16 two-day training update sessions with a total of 250 - 320 individuals will be held during 2003.</p> <p>c. National and Statewide data collected on physical restraint procedures, including single person restraint. <b>(Amendment 2 -11/29/04)</b></p> <p>d. Letter issued to LDSS and Voluntary agencies announcing policy direction. <b>(Amendment 2 -11/29/04)</b></p>	<p>f. <u>Projected:</u> Begin in Quarter 5; Continue through Quarter 6 <u>Actual:</u> Began in Quarter 5 <u>Actual:</u> Completed in Quarter 6</p> <p>a. <u>Projected:</u> End of Quarter 4 <u>Actual:</u> Completed by end of Quarter 2</p> <p>b. <u>End of Quarter-4</u> <u>Actual:</u> Completed by Quarter 4</p> <p>c. <u>Projected:</u> Begin in Quarter 1; Complete by end of Quarter 2 <u>Actual:</u> Completed by end of Quarter 1</p> <p>d. <u>End of Quarter 4</u> <u>Actual:</u> Completed by end of Quarter 4 <b>(Amendment 2 -11/29/04)</b></p>	<p>End of Qtr 6</p>
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<p>Reduce the rate of the incidence of child abuse and/or neglect in foster care, as measured by the National Standard, from 1.14% to 1% <b>Goal achieved (.87% in 2002)</b></p>	<p>New York will strengthen the prevention efforts by working with managers and administrators of congregate care programs to prevent incidents of abuse and maltreatment through the following action step:  Action Step 3.1d: Design and implement Institutional Abuse Prevention training and technical assistance targeted for executive directors and administrative levels of staff in congregate care facilities. This will be a Violence Prevention/Abuse Reduction training and technical assistance program.</p>	<p>Semi-Annual State data regarding the incidence of abuse/neglect in foster care (From NCANDS)</p>	<p>a. Training and technical assistance provided to residential program staff. A minimum of 75 days will be delivered with a minimum of 300 trainees/recipients of technical assistance.</p>	<p>a. End of Quarter 4 <u>Actual</u>: Completed by end of Quarter 4</p>	<p>End of Qtr 6</p>
<p>Reduce the rate of the incidence of child abuse and/or neglect in foster care, as measured by the National Standard, from 1.14% to 1% <b>Goal achieved (.87% in 2002)</b></p>	<p>New York will provide training to State Institutional Abuse investigation staff to strengthen investigative and prevention efforts.  Action Step 3.1e: Working with a contractor, training will be provided on topics relevant to the prevention and investigation of institutional abuse.</p>	<p>Semi-Annual State data regarding the incidence of abuse/neglect in foster care (From NCANDS)</p>	<p>All State IAB staff will be trained. This will be accomplished through a minimum of 20 training days.</p>	<p>End of Quarter 4 <u>Actual</u>: Completed by end of Quarter 4</p>	<p>End of Qtr 6</p>

## CFSR PIP Quarterly Report

### First Quarterly Report – July 2003 National Standard - Incidence of Child Abuse and/or Neglect in Foster Care

Action Step 1.16: Develop a foster parent training and support needs assessment instrument to be distributed to districts and agencies. The completed needs assessment will be reviewed and used as a basis for training and technical assistance resources to be provided to districts, agencies and foster parents to address the needs identified. This will occur in at least one district and one agency in each of the 6 regions (which includes New York City.)

Benchmark a: Initial meeting with training partners completed.

Benchmark b: Input from foster parents, local districts and foster care agencies obtained.

Status: Both completed- A meeting with the Professional Development Program (PDP), Center for Development of Human Services (CDHS) and the OCFS Bureau of Monitoring and Performance Improvement Training Unit (BMPI) was held on January 16<sup>th</sup>, 2003, to start looking at existing survey instruments and to begin planning for the distribution of the survey and data collection. Staff from CDHS and PDP have agreed to create a survey form that can be used to track both the service needs and training needs of foster parents. A subsequent meeting was held on March 18, 2003 to review the instruments. A work plan was created to outline the steps in the process and to support task completion within the PIP timeframes. The staff from CDHS and PDP are foster parents themselves. They will engage two other foster parents to work with them on the survey instruments, looking for their suggestions and comments. A workgroup has been formed with members from OCFS, OCFS/PDP, PDP, CDHS, a foster parent, and NYS Citizens Coalition for Children (CCC). The workgroup met on April 2<sup>nd</sup> and April 16<sup>th</sup> and worked on the design of two surveys, one for foster/adoptive parents and the other for voluntary agencies. The foster/adoptive survey has been distributed for internal and external review. Individuals from OCFS (Policy, Regional Offices and Legal) and stakeholders including local departments of social services, the NYS Foster Adoptive Parents Association (NYSFAPA), a voluntary agency and the Administration for Children Services, have been asked for comments. The work plan has been updated to reflect decisions that have been made concerning distribution of the survey.

Action Step 3.1c: Working with a contractor, OCFS will develop and provide a new training on single-person restraint techniques, including the circumstances under which this type of restraint is appropriate. This will be a train-the-trainer format

Benchmark c: Begin development of Curriculum in Quarter 1.

Status: Completed, with modifications.

Narrative: OCFS has had a contract with Cornell University for several years to provide training to voluntary agencies in Therapeutic Crisis Intervention (TCI), a comprehensive system of crisis avoidance, management and intervention. Contract agency stakeholders expressed concern when Cornell University eliminated the Single Person Prone Restraint technique from the TCI training curriculum in 2001. In response, OCFS Policy and Training staff researched alternative crisis management and intervention vendors from Dec. 2001 to July 2002 in order to identify a replacement technique. OCFS identified the three most promising models and invited them to present demonstrations at OCFS in August of

2002. Stakeholders were invited to attend the presentations and to provide feedback. During the fall of 2002, OCFS evaluated feedback from participants and identified one vendor whose curriculum was most compatible with current OCFS regulations and TCI practice. However, several months after being notified of their selection, the preferred vendor withdrew from consideration as a training subcontractor. At this time, OCFS is continuing with the existing training with Cornell which includes a basket-hold type restraint appropriate for children who are smaller than the person doing the restraint. OCFS is conducting a national review of other states' single person restraint practice. OCFS contacted multiple National Resource Centers for assistance, which led to our current work with the Child Welfare League of America in identifying the policies and practices of other states in regard to single person restraint.

Second Quarterly Report – October 2003  
National Standard - Incidence of Child Abuse and/or Neglect in Foster Care

Semi-Annual State data regarding the incidence of abuse/neglect in foster care (From NCANDS)  
Abuse/Neglect in Foster Care (%)

1999 = 1.12%  
2000 = 0.77%  
2001 = 0.98%

Action Step 1.1.15: New York will reduce the incidence of child abuse and neglect in foster homes by developing and distributing a model foster parent manual to local districts and voluntary agencies. Districts and agencies will provide this manual to foster parents to provide clarity regarding the roles, responsibilities, and expectations of foster parents.  
Benchmark: Multiple hard copies of the Manual, as well as a CD copy, will be distributed to every local district and voluntary agency. The Manual will also be posted on OCFS' web site. Follow-up will be conducted with a sample of 10 districts, New York City, and 15 agencies to verify their distribution of the Manual to foster parents.  
Status: The foster parent manual was distributed through a direct mailing to foster parents, and LDSS and voluntary agencies. A CD copy was produced and the manual was made available on the OCFS web page. Distribution will also be made at several upcoming trainings and a conference this fall. Districts and Voluntary Agencies were contacted by telephone to confirm their receipt of the foster parent manual. A series of questions were asked regarding when the district or agency distributed the manuals and comments regarding the manual were collected. The feedback from the telephone follow-up survey was shared with the OCFS Bureau of Training and Welfare Research Institute.

Action Step 1.16: New York will enhance the ability of foster parents, including kinship foster parents, to provide safe, stable, permanency focused placements through the following action step: Develop a foster parent training and support needs assessment instrument to be distributed to districts and agencies. The completed needs assessment will be reviewed and used as a basis for training and technical assistance resources to be provided to districts, agencies and foster parents to address the needs identified. This will occur in at least one district and one agency in each of the 6 regions (which includes New York City).

Benchmark: c - Needs assessment instrument developed and tested.

Status: Completed. The foster parent needs assessment instrument was finalized sent out to foster parents and LDSS/voluntary agencies. A total of 1740 needs assessment surveys were mailed out in August 2003. A total of 118 voluntary agencies and the 58 districts received the survey. Each agency was asked to have up to 10 foster care caseworkers complete the survey and return it to CDHS. Completed surveys were scanned and aggregated by CDHS. Additional surveys were given to foster parents who attend foster parent trainings and conferences held through CDHS and PDP in September.

Benchmark: d - Needs assessment completed.

Status: Completed. The foster parent needs assessment instrument was finalized sent out to foster parents and LDSS/voluntary agencies.

Action Step 3.1b: New York will strengthen the crisis intervention and de-escalation techniques used in congregate care settings to decrease incidence of maltreatment during crisis intervention through the following action steps:

OCFS will work through a contractor to deliver training in Therapeutic Crisis Intervention (TCI), designed to teach crisis intervention and de-escalation techniques, to voluntary agency child care staff and local district group home staff.

Benchmark: a - 10 Five-day train-the-trainer sessions with a total of 100-170 individuals trained.

Status: Completed. Cornell University is the trainer for the 5- day TCI Train the Trainer Module. The projected number of five-day train-the-trainer sessions and participants trained was achieved. Twelve (12) five-day TCI training sessions were provided to 201 participants.

Third Quarterly Report – January 2004  
National Standard - Incidence of Child Abuse and/or Neglect in Foster Care

No Benchmark due in Quarter 3 for this National Standard.

Fourth Quarterly Report – April 2004  
National Standard - Incidence of Child Abuse and/or Neglect in Foster Care

Action Step 3.1b: OCFS will work through a contractor to deliver training in Therapeutic Crisis Intervention (TCI) (designed to teach crisis intervention and de-escalation techniques) to voluntary agency child care staff and local district group home staff.

Benchmark b: 16 two-day training update sessions with a total of 250 - 320 individuals will be held during 2003.

Status: A total of 44 days of training were completed by the end of Quarter 4. A total of 467 individuals were trained. 7/1/02- 9/30/02: Three 2-day updates, 70 attendees- 7/10/02 - Dutchess, 8/7/02 - Erie, 9/4/02 - Albany. 10/1/02-12/31/02: Three 2-day updates 94 attendees- 10/16/02-Westchester, 11/13/02- Cayuga, 12/4/02 - Dutchess. 1/1/03-3/31/03: Five 2-day updates - 121 attendees - 1/15/03-Monroe, 1/29/03- Albany, 2/12/03-Erie, 2/26/03- Westchester, 3/26/03, Westchester.. 4/1/03-6/30/03- Three 2-day updates 76 attendees- 4/16/03-Westchester, 5/28/03-Albany, 6/25/03- Buffalo. 7/1/03-9/30/03- Four 2-day updates, 96 attendees - 7/9/03- Westchester, 8/27/03-Cayuga, 9/3/03-Albany, 9/17/03- Monroe. 10/1/03-12/1/03- Four 2-day updates 110 attendees - 10/1/03- Westchester, 10/29/03- Buffalo, 11/5/03- Dutchess, 12/3/02, Cayuga.

Action Step 3.1d: Design and implement Institutional Abuse Prevention training and technical assistance targeted for executive directors and administrative levels of staff in congregate care facilities. This will be a Violence Prevention/Abuse Reduction training and technical assistance program.

Benchmark a: Training and technical assistance provided to residential program staff. A minimum of 75 days will be delivered with a minimum of 300 trainees/recipients of technical assistance.

Status: Through 12/31/03 a total of 99 days of technical assistance on Violence Prevention and Abuse reduction has been provided to approximately 600 participants. Training and TA -IAB 7/1/02-9/30/02:- 7 days 7/25/02-7/26/02-hopevale, 8/13/02-8/14/02-LaSalle, 8/15/02-8/16/02-Cayuga Home, 9/24/02-LaSalle. 10/1/02-12/31/02: 7 days, 10/02/02- Hopevale, 10/03/02-Salvation Army-Wayside, 10/10/02- LaSalle  
10/25/02- Hopevale, 11/1/02- Salvation Army-Wayside, 12/12/02- Hopeville, 12/19/02- Syracuse Regional Office. 1/1/03-3/31/03: 11 days - 1/23/03- Wayside, 1/24/03- East Village Residence, 2/20/03- Hillside Children's Center, 2/25/03- Hillside Children's Center, 3/3/03- Liberty Resources, 3/4/03-Multiple Agencies, 3/5/03-East Village Residence, 3/25/03- St. Cabrini, 3/26/03-Little Flower, 3/28/03-St. Christopher Otilie, 10/1/03 - 12/31/03 - 27 days 10/1 - 10/2/03 - St. Christopher's, 10/3/03- Little Flower, 10/14/03 - Little Flower, 10/21/03 - Glove House, 10/23/03 - House of Good Shepard, 10/24/03 - Glove House, 10/26/03 - Yonkers Regional Office, 10/31/03- House of Good Shepard, 10/31/03 Gustavus Adolphus, 11/3/03 11/6/03- CWLA Training, 11/17 - 11/18/03 St. Christopher, 11/20/03 Central and Regional office, 12/1/03 - House of Good Shepard, 12/5/03 - Gustavus Adolphus, 12/5/03 - Glove House, 12/8-12/11/03 CWLA training, 12/12/03 Children's Home of Poughkeepsie, 12/17/03 - Gateway Longview, 12/19/03 - Kidspeace

Action Step 3.1e: Working with a contractor, training will be provided on topics relevant to the prevention and investigation of institutional abuse.

Benchmark a: All State IAB staff will be trained. This will be accomplished through a minimum of 20 training days.

Status: A total of 21 days and 273+ staff have been trained. At this time it appears all IAB staff have been trained. Trainings completed as follows:



7/1/02-9/30/02- 5 days 41 attendees- (7/8/02, 7/12/02, 7/30/02, 7/31/02, 8/01/02). 10/1/02-12/31/02 – 3 days, 75 attendees- (10/15/02, 12/13/02, 12/20/02). 7/1/03-9/30/03 9 days 128 attendees, (8/6/03, 8/19/03, 8/21/03, 9/4/03, 9/5/03, 9/12/03, 9/19/03, 9/23/03, 9/24/03). 10/1/03-12/31/03 – 2 days 9 attendees, (11/5/03, 11/19/03). 1/1/04-3/31/03 2 days, number of attendees unknown (2/13/04, 2/24/04).

**Fifth Quarterly Report – August 2004**  
National Standard - Incidence of Child Abuse and/or Neglect in Foster Care

Action Step 1.16: Develop a foster parent training and support needs assessment instrument to be distributed to districts and agencies. The completed needs assessment will be reviewed and used as a basis for training and technical assistance resources to be provided to districts, agencies and foster parents to address the needs identified. This will occur in at least one district and one agency in each of the 6 regions (which includes New York City.)

Benchmark e: Training and technical assistance plan developed.

Status: Completed in Quarter 5. Through a training contract with the Center for Development of Human Services, OCFS currently provides local districts and agencies with a program to prepare and orient prospective foster/adoptive parents to their role and responsibilities. It also provides an in-service training program for certified or approved foster/adoptive parents. As well, OCFS provides training seminars and technical assistance for foster/adoptive parents. OCFS' foster/adoptive parent preparation and training contact is designed as a resource system in which a wide variety of training and technical assistance can be reconfigured, modified or created to meet emerging needs. This flexibility enabled the Office to revise or develop training and technical assistance based on the results of its statewide foster/adoptive parent survey.

Benchmark f: Training and technical assistance provided to at least one district and one agency in each of the 6 regions of the State (which includes New York City) in addressing the needs identified.

Status: Training began in Quarter 5 through CDHS. A copy of training and technical assistance planned for this year is included in this submission.

**Sixth Quarterly Report – November 2004**  
National Standard: Stability of Foster Care Placements

Enhance the ability of foster parents, including kinship foster parents to provide safe, stable, permanency focused placements by:

Action Step 1.16: Develop a foster parent training and support needs assessment instrument to be distributed to districts and agencies. The completed needs assessment will be reviewed by OCFS and shared with local districts and used as a basis for developing and targeting training and technical assistance resources to be provided to districts, agencies and foster parents to address the needs identified. This will occur in at least one district and one voluntary agency in each of the 6 Regions of the State (which includes New York City).

Benchmark f: Training and technical assistance provided to at least one district and one agency in each of the 6 Regions of the State (which includes New York City)- in addressing the needs identified.

Status: Training continues throughout the State. Training on legal issues was developed by CDHS and was held on September 9, 2004 in Buffalo, September 10, 2004 in Rochester, October 2, 2004 in Syracuse, and October 6, 2004 in Albany. Staff from local districts and voluntary agencies was invited and attended the training. Legal training will continue in New York City, with three training sessions planned by the end of 2004. Legal issues was one of the top trainings of interest to foster parents according to the foster parent survey.

Also, CDHS has set up a pilot for on-line training called iLinc, a distance-training program that uses the Internet to connect instructors and learners. It is not meant to be a replacement for direct training, but rather a supplemental method available to interested and technologically enabled participants. Three topics are being offered via iLinc, Promoting Attachment (10/19/04, 10/21/04, 10/25/04), Introduction to Multiple Intelligences (10/27/04, 11/1/04, 11/2/04), and Ages and Stages of Development (11/8/04, 11/10/04, 11/12/04). Each of the sessions is offered at various times throughout the day.

**All Action Steps are completed for this National Standard**

# **EXHIBIT Y**

**ORIGINAL****COLLEGES AND UNIVERSITIES RATE AGREEMENT**

EIN #: 1150532082A4

DATE: October 26, 2005

INSTITUTION:  
 Cornell University  
 341 Pine Tree Road  
 Ithaca

NY 14850-2820

FILING REF.: The preceding  
 Agreement was dated  
 July 6, 2005

The rates approved in this agreement are for use on grants, contracts and other agreements with the Federal Government, subject to the conditions in Section III.

**SECTION I: FACILITIES AND ADMINISTRATIVE COST RATES\***

RATE TYPES: FIXED FINAL PROV. (PROVISIONAL) PRED. (PREDETERMINED)

TYPE	EFFECTIVE PERIOD		RATE (%)	LOCATIONS	APPLICABLE TO
	FROM	TO			
PRED.	07/01/05	06/30/07	58.0	On-Campus	Endowed Research
PRED.	07/01/07	06/30/09	59.0	On-Campus	Endowed Research
PRED.	07/01/05	06/30/08	53.5	On-Campus	Contract Coll. Res.
PRED.	07/01/08	06/30/09	54.0	On-Campus	Contract Coll. Res.
PRED.	07/01/05	06/30/09	56.7	On-Campus	Contract Coll. ESA
PRED.	07/01/05	06/30/09	11.0	Off-Campus	All NAIC Programs
PRED.	07/01/05	06/30/09	26.0	Off-Campus	All Progs (excl. NAIC)
PROV.	07/01/09	UNTIL AMENDED	Use same rates and conditions as those cited for fiscal year ending June 30, 2009.		

**\*BASE:**

Modified total direct costs, consisting of all salaries and wages, fringe benefits, materials, supplies, services, travel and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Modified total direct costs shall exclude equipment, capital expenditures, charges for patient care, tuition remission, rental costs of off-site facilities, scholarships, and fellowships as well as the portion of each subgrant and subcontract in excess of \$25,000.

INSTITUTION:  
Cornell University

AGREEMENT DATE: October 26, 2005

SECTION I: FRINGE BENEFITS RATES\*\*

RATE TYPES: FIXED FINAL PROV. (PROVISIONAL) PRED. (PREDETERMINED)

TYPE	EFFECTIVE PERIOD		RATE (%)	LOCATIONS	APPLICABLE TO
	FROM	TO			
FIXED	07/01/05	06/30/06	32.0	Endowed Coll	(1)
FIXED	07/01/06	06/30/08	33.0	Endowed Coll	(1)
FIXED	07/01/05	06/30/08	10.0	Endowed Coll	(2)
PROV.	07/01/08	UNTIL AMENDED	Use same rates and conditions as those cited for fiscal year ending June 30, 2008.		
FIXED	07/01/05	06/30/06	47.5	Contr. Coll	All Employ. (3)
PROV.	07/01/06	UNTIL AMENDED	47.5	Contr. Coll	All Employ. (3)

(1) Full benefit employees, includes benefits listed in #2 below and see special remarks section for additional benefits covered.

(2) Applicable to visiting faculty, summer faculty without retirement, Executive Education faculty appointments, non-benefit eligible temporary employees, summer students (if not registered) and bonus payments. Includes mandated benefits such as Social Security, Worker's Compensation, Disability and Unemployment.

(3) Contract College fringe benefits are claimed using approved rates contained in the New York State-Wide Cost Allocation Plan plus a small add-on for the university paid component.

\*\*DESCRIPTION OF FRINGE BENEFITS RATE BASE:  
Salaries and wages.

INSTITUTION:  
Cornell University

AGREEMENT DATE: October 26, 2005

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**SECTION II: SPECIAL REMARKS**

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**TREATMENT OF FRINGE BENEFITS:**

The fringe benefits are charged using the rate(s) listed in the Fringe Benefits Section of this Agreement. The fringe benefits included in the rate(s) are listed below.

**TREATMENT OF PAID ABSENCES:**

Vacation, holiday, sick leave pay and other paid absences are included in salaries and wages and are claimed on grants, contracts and other agreements as part of the normal cost for salaries and wages. Separate claims for the costs of these paid absences are not made.

1. The rates in this Agreement have been negotiated to reflect the administrative cap provisions of the revisions to OMB Circular A-21 published by the Office of Management and Budget on May 8, 1996. No rate affecting the institution's fiscal periods beginning on or after October 1, 1991, except rates for DOD contracts and subcontracts, contains total administrative cost components in excess of that 26 percent cap.
2. Extraordinary electrical costs for the Laboratory Of Nuclear Studies and extraordinary electrical costs, telecommunications costs and chilled water costs of the Theory Center program associated with, but not including normal utility costs for building maintenance are excluded from the modified total direct cost base. In addition, the electrical costs of the NAIC Arecibo radio telescope site in Puerto Rico are also excluded from the modified total direct cost base. The exclusion of these costs from the MTDC base does not represent an agreement that these exclusions are accepted for subsequent negotiation of future years' rates.
3. In addition to the fringe benefits listed in the Fringe Benefits Section of this agreement, the following fringe benefits are included in the full benefit rates: retirement, health insurance, life insurance, long term disability, employee tuition, employee wellness and assistance program and childcare.
4. Effective 7/1/99 tuition support for dependents of Cornell University employees is no longer an allowable fringe benefit expense and is not included in the approved rates.
5. Equipment means an article of nonexpendable, tangible personal property having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit.

INSTITUTION:  
Cornell University

AGREEMENT DATE: October 26, 2005

SECTION III: GENERAL

A. LIMITATIONS:

The rates in this Agreement are subject to any statutory or administrative limitations and apply to a given grant, contract or other agreement only to the extent that funds are available. Acceptance of the rates is subject to the following conditions: (1) Only costs incurred by the organization were included in its facilities and administrative cost pools as finally accepted; such costs are legal obligations of the organization and are allowable under the governing cost principles; (2) The same costs that have been treated as facilities and administrative costs are not claimed as direct costs; (3) Similar types of costs have been accorded consistent accounting treatment; and (4) The information provided by the organization which was used to establish the rates is not later found to be materially incomplete or inaccurate by the Federal Government. In such situations the rate(s) would be subject to renegotiation at the discretion of the Federal Government.

B. ACCOUNTING CHANGES:

This Agreement is based on the accounting system purported by the organization to be in effect during the Agreement period. Changes to the method of accounting for costs which affect the amount of reimbursement resulting from the use of this Agreement require prior approval of the authorized representative of the cognizant agency. Such changes include, but are not limited to, changes in the charging of a particular type of cost from facilities and administrative to direct. Failure to obtain approval may result in cost disallowances.

C. FIXED RATES:

If a fixed rate is in this Agreement, it is based on an estimate of the costs for the period covered by the rate. When the actual costs for this period are determined, an adjustment will be made to a rate of a future year(s) to compensate for the difference between the costs used to establish the fixed rate and actual costs.

D. USE BY OTHER FEDERAL AGENCIES:

The rates in this Agreement were approved in accordance with the authority in Office of Management and Budget Circular A-21 Circular, and should be applied to grants, contracts and other agreements covered by this Circular, subject to any limitations in A above. The organization may provide copies of the Agreement to other Federal Agencies to give them early notification of the Agreement.

E. OTHER:

If any Federal contract, grant or other agreement is reimbursing facilities and administrative costs by a means other than the approved rate(s) in this Agreement, the organization should (1) credit such costs to the affected programs, and (2) apply the approved rate(s) to the appropriate base to identify the proper amount of facilities and administrative costs allocable to these programs.

BY THE INSTITUTION:

Cornell University

(INSTITUTION)



(SIGNATURE)

Joanne M. DeStefano

(NAME)

Vice President for Financial Affairs &  
University Controller

(TITLE)

October 31, 2005

(DATE)

ON BEHALF OF THE FEDERAL GOVERNMENT:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

(AGENCY)



(SIGNATURE)

Robert I. Aaronson

(NAME)

DIRECTOR, DIVISION OF COST ALLOCATION

(TITLE)

October 26, 2005

(DATE) 0942

HHS REPRESENTATIVE: Michael Leonard

Telephone: (212) 264-2069

# **EXHIBIT Z**





New York State  
Office of  
Children & Family  
Services

April 5, 2004

Ms. Denise Clark  
Director  
Office of Sponsored Programs  
Cornell University  
120 Day Hall  
Ithaca, New York 14853

**RE: OCFS Training Workplan RC 03**

George E. Pataki  
*Governor*

John A. Johnson  
*Commissioner*

Dear Ms. Clark:

The purpose of this letter is to provide you with final approval of the Training and Administrative Service Activity workplan entitled "Therapeutic Crisis Intervention" (RC 03) that was conditionally approved on December 22, 2003. Copy attached. The funding level for both gross and reimbursable workplan amounts remain unchanged. The workplan and requirements provided to you with the conditional approval letter are still applicable except for:

Each workplan requires an overall monthly billing and a Summary of Cost form (3106) for each project included in the workplan.

Administrative Service Activities and Department Appeals Board Decision 1666 (DAB 1666) costs must continue to be tracked by project and object of expense, however they need only be reported with the final monthly claim and any subsequent claims.

Please refer to the "Streamlining the Contract Process" guidelines, previously sent to you by Peter Miraglia on February 3, 2004, for information regarding the processing of budget modifications.

If you have any questions concerning this letter, please contact Jim Spoor of my staff at (518) 486-6380.

Sincerely,

John G. Moriarty  
Director  
Bureau of Contract Management

Enclosures

cc: Deb Hanor  
Peter Miraglia  
Carol Frament  
Jim Spoor  
Mike Nunno



*Capital View Office Park*

52 Washington Street  
Rensselaer, NY 12144-2796

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## **JURISDICTIONAL STATEMENT**

This is an appeal from the Order and final Judgment of the United States District Court for the Northern District of New York (Honorable David N. Hurd), dated and entered the 29th day of September, 2005, which granted Defendants' motions to dismiss the Complaint (A-296, A-316). The Court dismissed with prejudice the First, Seventh and Eighth causes of action stating federal claims, and dismissed without prejudice the remaining causes of action stating state law claims.

Plaintiffs-Appellants ("Plaintiffs") asserted jurisdiction in the District Court based on 15 U.S.C.A. §§ 15 and 26, 28 U.S.C.A §§ 1331, 1337, 1343 and 1367.

Appellate jurisdiction is based on 28 U.S.C.A. § 1291 in that this appeal is from a final Judgment of the United States District Court for the Northern District of New York that disposed of all claims with respect to all parties.

## **STATEMENT OF ISSUES**

1. Whether the District Court erred in dismissing with prejudice the antitrust claims in Plaintiffs' initial Complaint on the grounds, *inter alia*, that Plaintiffs did not adequately plead a correct relevant market.
2. Whether the District Court erred in dismissing the copyright claims in

Plaintiffs' initial Complaint on the grounds, *inter alia*, that the Court essentially made findings of fact as to the term of a non-exclusive copyright license granted as part of a one-year service contract.

3. Whether the District Court abused its discretion in dismissing Plaintiffs' initial Complaint with prejudice, without granting leave to Plaintiffs to replead.

### **STATEMENT OF CASE**

In their first -- and only -- Complaint, Plaintiffs described an unusual arrangement involving Defendant-Appellee New York State Office of Children and Family Services ("OCFS"), which oversees private foster care agencies ("Private Foster Agencies") in New York State, and Defendant-Appellee Cornell University ("Cornell"). The Complaint alleged that with Cornell's participation, OCFS, by its adverse regulatory actions and threats of detrimental licensing actions, for many years has prevented all the Private Foster Agencies in New York State from contracting with Plaintiffs -- or any other vendors of restraint training -- to train their staff. The Complaint contended that instead, these Private Foster Agencies were and continue to be required -- and even coerced -- by OCFS to use the restraint training program owned and administered by Cornell, to the exclusion of all others.

Plaintiffs asserted claims under the Sherman Act, Sections One and Two, alleging injury to competition in that, as a result of the anticompetitive conduct, Cornell is charging, and OCFS is paying, more than four times the price Cornell charges its other customers for the same training. Plaintiffs also alleged antitrust injury, seeking damages and injunctive relief because they have been prevented from contracting with Private Foster Agencies that sought to use them as their provider of choice of restraint training.

Under New York law, the autonomous Private Foster Agencies have sole responsibility for the administration of their foster care homes, including choosing the training program that will best serve their foster children and staff. OCFS nevertheless engaged in anti-competitive coercion by misusing its regulatory authority to approve the agencies' "restraint policy" (including "plans" for restraint training) *only* if such "policy" included using Cornell's training program.

Defendants below moved to dismiss under Fed. R. Civ. P. 12(b)(6) and successfully persuaded the District Court that the Complaint failed to allege an adequate "relevant market" in which the impact of Defendants' restraint of trade misconduct (under Section One of the Sherman Act) and monopolization activity (under Section Two) could be judged actionable. OCFS and Cornell also sought the protection of antitrust immunity under the state action doctrine, a defense as to



which the Court expressed serious doubt, but did not rule upon.

Even though Defendants agreed that the Complaint “may be broadly and liberally construed to alleged [sic] anticompetitive conduct” (Docket No. 51, p. 15), and that a dismissal without leave to amend is only appropriate “in extraordinary circumstances” (Docket No. 51, p. 10), the District Court dismissed the antitrust claims with prejudice (A-296, A-316).

The Complaint also stated federal copyright claims, alleging that certain New York State agencies and their employees infringed upon Plaintiffs’ copyrighted training materials. As to the copyright claims, the District Court engaged in an unusual level of fact-finding in determining the effective term of a written, but non-integrated, agreement. Despite an express expiration date, the Court found no copyright violation by Defendants, notwithstanding allegations of their continued copying of Plaintiffs’ copyrighted training materials beyond the expiration date. The District Court dismissed the copyright claims, also with prejudice (A-296, A-316).

The District Court’s decision dismissing the antitrust claims in Plaintiffs’ Complaint with prejudice under Rule 12(b)(6), on the basis of a perceived inadequacy of the pleaded relevant market, is highly unusual and greatly disfavored. As to the copyright claims, the District Court’s interpretation of the

contract at the pleading stage was inconsistent with the very contractual documents presented.

Appellants seek a vacatur of the judgment below, together with a remand to the District Court for the purpose of granting Plaintiffs leave to file an Amended Complaint.

## **STATEMENT OF FACTS**

### **A. The Allegations in the Complaint (A-25 - A-45)<sup>1</sup>**

#### **1. The Plaintiffs**

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<sup>1</sup> The allegations in the Complaint are admittedly somewhat sparse and, in places, not entirely clear. The Complaint's allegations were supplemented by various documents submitted by Defendants with their motions to dismiss. We freely refer to these supplemental materials and any regulatory material to elaborate on the nature of the Complaint. *See* OCFS's Principal Memo., Docket No. 60, p. 8 (agreeing that public records of an administrative agency may be judicially noticed in connection with a Rule 12(b)(6) motion). *See also Kramer v. Time Warner Inc.*, 937 F.2d 767, 773 (2d Cir. 1991) (permitting factual matters not incorporated in a complaint to be considered on a motion to dismiss under Rule 12(b)(6) if they are proper for judicial notice).

Plaintiff Bruce Chapman (“Chapman”) is the president of Plaintiff Handle With Care Behavior Management System, Inc. (“HWC”) (¶¶ 3-4).<sup>2</sup> He is the author and copyright owner of a series of manuals and audio visual materials on the topic of crisis intervention, including physical restraint, as well as the owner of all derivative rights associated with the manuals and videos (¶¶ 43-45). Using these materials, Chapman has been involved in providing training in crisis intervention, including physical restraint, since the 1980s (¶¶ 27-28, 50-51).<sup>3</sup> Since approximately 1998, Chapman has providing training through HWC, a corporation of which Chapman is president and sole owner (¶¶ 4, 27-28, 50).<sup>4</sup>

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<sup>2</sup> All “¶” references are to the Complaint, unless otherwise noted.

<sup>3</sup> Chapman is also the holder of a patent for an apparatus and method for safely maintaining a restraining hold on a person. Patent Reg. Nos. 6360749, 6273091.

<sup>4</sup> The Complaint used various phrases for the type of training provided to the Private Foster Agencies, *e.g.*, “use of force program” (¶ 36), “behavior management” (¶ 36), “crisis intervention” (¶ 36) and “restraint training “ (¶ 90). The regulations define “physical restraint”

Training in physical restraint techniques is part of general “crisis intervention” training programs (¶¶ 4, 36, 90).

The first Chapman copyright, obtained on June 7, 1984, is for a manual entitled, “Handle with Care - A Revolutionary Approach to Behavior Management” (¶ 44). Derivative works include a performance-based (live) training program, updated manuals and numerous video tapes (¶ 44). Chapman has also copyrighted all significant updates of these materials. Copyright notifications were affixed to all materials (¶¶ 43-45).

In 1997, HWC was hired by Defendant The New York Division for Youth (“DFY”) to train the staff of residential facilities for juvenile delinquents in a “safe use of force [restraint] program,” including physical restraint techniques (¶¶ 27-28, 50). Although Chapman and HWC were solicited and hired by DFY, the predecessor to OCFS, to provide restraint training to state-owned juvenile

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as “the use of staff to hold a child in order to contain acute physical behavior.” 18 N.Y.C.R.R. § 441.17(a)(3). Hereafter, for simplicity, this activity will be denominated as “restraint” or “physical restraint,” the training as “restraint training,” and a Private Foster Agency’s relevant policy as its “restraint policy.” Regulations also call for training in methods of reducing or preventing the need for the use of restraint. The combined program of prevention and restraint is sometimes generally called “crisis intervention” (¶ 90).

delinquent facilities, OCFS has prevented Private Foster Agencies in New York State from using HWC -- or any training providers other than Cornell -- to provide restraint training to their staffs (¶¶ 34-38, 71-73, 86-91).

## **2. The Defendants**

The Complaint names three categories of Defendants: (1) several New York State agencies, principally OCFS and DFY, as well as several of their employees (collectively, the “State Defendants” or “OCFS”) (¶¶ 5-10); (2) Cornell and several related institutions and entities, as well as several Cornell employees (collectively, the “Cornell Defendants” or “Cornell”) (¶¶ 11-19); and (3) Hillside Children’s Center, a corporation, and several of its owners and employees (the “Hillside Defendants”) (¶¶ 20-22).

DFY, until 1998, was the agency that operated state-owned correctional facilities for juvenile delinquents throughout New York (¶¶ 5, 23-24). Defendant the New York State Department of Social Services (“DSS”), until 1998, was responsible for the approval and regulation of Private Foster Agencies (¶¶ 6, 23). In 1998, both DFY and a portion of DSS were merged into OCFS (¶¶ 7, 23, 31, 82). In 1998, OCFS, a sub-agency of the newly-created New York State Department of Family Assistance, assumed responsibility for overseeing Private

Foster Agencies (¶¶ 7, 23).<sup>5</sup> OCFS also assumed the functions of DFY, which, as noted above, had contracted in 1997 with Chapman to train DFY staff in Chapman's (and HWC's) physical restraint program (¶¶ 7, 23, 50, 82). As DFY's successor, OCFS continued to use and copy copyrighted materials created by Chapman even after the contract expired (¶¶ 46-47, 50-53).

In the 1980s, Cornell also developed a restraint training program, calling it "Therapeutic Crisis Intervention" ("TCI") (¶¶ 35, 87; A-48, A-124). Like Chapman's and HWC's program, TCI includes training in physical restraint (¶¶ 35, 87, 90; A-95 - A-102, A-124 - A-136). The TCI program is owned by Cornell; however, OCFS has an unlimited right to use Cornell's program and materials to train staff of Private Foster Agencies within New York State (¶¶ 35, 87, 90; Docket No. 51, p. 4). Cornell, with Defendant The New York State College of Human Ecology at Cornell University ("CHE"), markets the TCI program in New York State and elsewhere (¶¶ 91-92).

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<sup>5</sup> The Complaint used various terms for these "private foster agencies," such as "child care providers" (¶ 23), "private child care providers" (¶ 31) and "residential treatment centers" (¶ 83). They are defined by statute and regulation as "voluntary authorized agencies." N.Y. Soc. Serv. Law § 371(10)(a) and (c). For simplicity, they are herein referred to as Private Foster Agencies.

### **3. HWC's 1997 Agreement with DFY**

Part of DFY's responsibilities for the care of juvenile delinquents in state custody included training its staff in techniques to physically restrain juveniles under appropriate circumstances, such as when a juvenile posed a threat to his own safety, other juveniles or DFY staff (§ 24). DFY also created a "use of force policy" governing when physical restraint could be used (§ 25).

Between 1994 and 1996, serious mental and physical injuries -- including two deaths -- resulted from the use of physical restraint by DFY staff (§§ 26, 58; Docket No. 67, pp. 4-5). Thereafter, in 1997, upon examining the merits and success of HWC's training program, DFY retained HWC to train DFY staff in HWC's proprietary program, including physical restraint techniques (§§ 27, 50, 59).<sup>6</sup>

As part of this 1997 agreement, HWC trained DFY staff and also licensed DFY to use and reproduce HWC's copyrighted training materials, so that HWC-trained and HWC-certified DFY staff members could, in turn, train other

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<sup>6</sup> DFY had previously hired Chapman to provide similar restraint training for DFY in 1987 (A-158 - A-162). Chapman was the sole proprietor of his training business, which by 1997 did business under the name "Handle With Care" (A-178). HWC was incorporated in 1998, and most of Chapman's intellectual property was subsequently transferred or licensed to HWC.

DFY staff in HWC's restraint program (§§ 28, 50-52). Pursuant to this agreement, in April 1997, Chapman provided twelve days of training to DFY staff, including training and certifying staff members as instructors in HWC's restraint program, and also provided written and audio visual materials (§§ 50-52). The 1997 agreement had an initial term of four months, with an option to extend for two additional four-month periods, totaling a one year period in all (§§ 28, 51-52, 61-63, 66). Furthermore, each DFY staff member trained in HWC's restraint program acknowledged in writing that the staff member was only permitted to train others in HWC's program during the pendency of that one-year period (§§ 61-63; A-181).

Notwithstanding the above-described terms of the parties' agreement, after the one-year period ended in 1998, DFY -- now OCFS -- "misappropriated HWC's property, program and techniques" by continuing to copy HWC's materials and train in HWC's program (§§ 29-30, 46-47, 53-54).

#### **4. The Autonomy of the Private Foster Agencies and OCFS's Regulatory Oversight**

Statutes and regulations governing Private Foster Agencies<sup>7</sup> afford

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<sup>7</sup> Pursuant to both New York Social Service Law ("NY-SSL") §§ 371(10)(a) and (c) and 18 N.Y.C.R.R. § 441.2(b), "Voluntary Authorized Agency" means "any agency, association, corporation, institution, society or other organization which is incorporated or organized under the laws of New York with corporate power or empowered by law to care for, to place or to board out children." Such Agencies, referred to as Private Foster Agencies herein, are approved and supervised by OCFS. NY-SSL § 462; 18 N.Y.C.R.R. §§ 477.4, 482.3. *See generally* 18 N.Y.C.R.R. Ch. II, sub. C. Any private corporation that includes as one of its corporate purposes



such agencies a substantial amount of autonomy. N.Y. Soc. Serv. Law (“NY-SSL”) § 460-a; 18 NYCRR §§ 441.3, 482.3. As for the sensitive area of restraint policy and related training, OCFS merely requires that Private Foster Agencies submit their restraint policies to OCFS for approval (§§ 82-84). 18 N.Y.C.R.R. § 441.17.

Regulations mandate that the “board of directors or other governing board” of a Private Foster Agency “shall manage the affairs of such agency in accordance with applicable [law].” 18 N.Y.C.R.R. § 441.3(a)(1). The Agency’s “chief executive officer” (“CEO”) shall “be responsible to the governing board for the proper administration of the agency . . .” 18 N.Y.C.R.R. § 441.3(a)(4)(i).

Ultimately, it is the board of the Private Foster Agency that is expressly charged with “assur[ing] the proper care of children for whom such agency is responsible.” 18 N.Y.C.R.R. § 441.3(a)(4)(iii). The responsibilities of the CEO of the agency -- that is, *not* OCFS -- include the duty to “direct, evaluate and coordinate all aspects of an agency’s program,” including “staff development *and training*.” 18 N.Y.C.R.R. § 441.3(c)(1)(emphasis added).

OCFS is required, *inter alia*, to ensure that the staff of Private Foster Agencies receives training in “safety and security procedures . . . [and] techniques

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providing foster care must obtain written approval by OCFS before filing its certificate of incorporation. NY-SSL § 460-a; 18 N.Y.C.R.R. §§ 477.1, 477.4.

of . . . child management including crisis intervention . . .” NY-SSL § 462. As noted, OCFS has promulgated regulations with respect to the duration and nature of such training. 18 N.Y.C.R.R. § 441.17(h). A Private Foster Agency, in order to use any physical restraint on a child in its care, must first submit its restraint policy to OCFS, including its plan for training its staff in the use of restraint. 18 N.Y.C.R.R. § 441.17(c)-(d)(4)(i)-(ii). Each member of the agency’s staff who is involved in the use of restraint must complete a minimum amount of training “in the agency’s policy” on several subjects, including “methods of applying restraint and the rules which must be observed in so doing.” 18 N.Y.C.R.R. § 441.17(h)(1)(iv).

There is no provision of law requiring -- or even permitting -- OCFS to *mandate* the use by Private Foster Agencies of any particular source of training, including outside vendors of restraint training.

**5. OCFS’s Anticompetitive Actions Regarding the Restraint Policies of Private Foster Agencies**

In 1998, OCFS assumed responsibility for the supervision of Private Foster Agencies in New York State (¶¶ 31, 82). However, without regulatory authority to manage the affairs of the Private Foster Agencies beyond mere approval authority pursuant to 18 N.Y.C.R.R. § 441.17(c), OCFS, with the “participation” of Cornell, has “systematically refus[ed]” to allow the Agencies to select their own restraint training vendors (¶¶ 34, 86, 88-90). OCFS’s compulsion

of Private Foster Agencies to use Cornell's TCI program is described as "illegal" in the Complaint because it gives Cornell and OCFS a "monopoly situation within the State of New York" by disallowing Private Foster Agencies the freedom to contract with HWC or any other vendor of restraint training (¶¶ 36, 38, 90).<sup>8</sup>

OCFS has, under the threat of adverse regulatory and licensing actions, compelled all Private Foster Agencies within New York State to use only Cornell's TCI program (¶¶ 88-89), and, accordingly, to engage in a concerted refusal to deal with HWC or other vendors of restraint training (¶¶ 70-74, 90). As a result, Private Foster Agencies expressing an interest in using HWC's (and others') programs were coerced by OCFS into *not* using HWC (¶¶ 71-73).

OCFS has also indicated directly to HWC that OCFS would *simply not permit* HWC (or any vendor other than Cornell) to provide restraint training to the Private Foster Agencies (¶¶ 73, 88, 89; Complaint in *Qui Tam* action, described in note 9, *infra*, ¶¶ 111-120). Specifically, OCFS reminded HWC that, although Private Foster Agencies are free to negotiate with HWC for training programs, OCFS would ultimately refuse to approve any such arrangement pursuant to

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<sup>8</sup> Counsel concedes that the Complaint, which was not prepared by undersigned counsel, was not terribly detailed nor articulate, particularly in delineating the various theories of liability under Sherman Act §§ 1 and 2.

nothing more than the self-styled mandate of 18 N.Y.C.R.R. § 441.17(c), which provides that “an authorized agency shall not use any method of restraint unless it has submitted its restraint policy to [OCFS] and such policy has been approved in writing by [OCFS]” (¶¶ 84, 86, 88).

Put another way, OCFS has created an environment whereby foster care agencies “*can only use TCI as their use of force training provider or risk their license and ability to do business within the State of New York*” (¶ 88; emphasis added). In the face of regulations that give Private Foster Agencies the right to select their own restraint training provider (18 N.Y.C.R.R. § 441.3(c)(1)), OCFS has even “told [Private Foster Agencies] that the only approved restraint training vendor is TCI” and that the Agencies “can not contract with [HWC] *or any other restraint trainer vendor* for services or risk their license and ability to do business within the State of New York” (¶ 89; emphasis added). OCFS’s actions, in conjunction with Cornell and CHE, have indeed created a “monopoly control” over the restraint training services provided to and purchased by Private Foster Agencies in New York State (¶ 90).

Plaintiffs’ Complaint specifically alleges that some Private Foster Agencies have been rebuffed by OCFS in their efforts to contract with HWC and vendors of restraint training other than Cornell (¶¶ 71-72, 89; Complaint in *Qui*

*Tam* action, described in note 9, *infra*, ¶ 117). The anti-competitive effect of this activity on this market (in which Private Foster Agencies in New York select restraint training vendors) is not illusory (¶¶ 89-90). The Complaint alleges that this improper arrangement between OCFS and Cornell has enabled Cornell to bill New York State over four times the amount Cornell charges its non-New York State clients for the *same TCI training* (¶¶ 40, 91-92).<sup>9</sup> This arrangement has also suppressed quality competition, as well as price competition (A-174 - A-176; A-253 - A-257; <http://www.aichhorn.org/aichhome2.html>).

## 6. The Copyright Infringement

Plaintiffs gave notice to OCFS that its activities constitute copyright

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<sup>9</sup> Most of this excessive cost has not been paid by New York State, but by the United States (“the Government”). See Amended Complaint in *United States of America ex rel. Chapman v. Cornell University, et al.*, 1:04-CV-1505 (N.D.N.Y. 2005), brought under the *qui tam* provisions of the False Claims Act, 31 U.S.C.A. §§ 3729 *et seq.* The principal allegations of the *Qui Tam* action, which is brought solely in favor of the Government, are that Cornell and OCFS submitted false claims by, *inter alia*, improperly obtaining reimbursement for the costs of TCI training under Title IV-E of the Social Security Act, and also violated federal regulations requiring adherence to competitive pricing requirements for using outside vendors such as Cornell. The *Qui Tam* action and the Complaint under review in this appeal involve different plaintiffs, different claims and different damages.

infringement (¶¶ 47, 67-68). Nevertheless, OCFS has continued, without license, assignment or permission, to reproduce Plaintiffs' copyrighted materials without compensating Plaintiffs (¶¶ 48, 53-54). Specifically, DFY -- now OCFS -- has continued to reproduce Plaintiffs' written and audio visual materials, provided pursuant to the contract the parties entered into in 1997 and which expired in 1998 (¶¶ 53-54).

**B. The Motions to Dismiss**<sup>10</sup>

**1. Antitrust**

OCFS asserted that the antitrust claims are “facially deficient” in that the Complaint fails to plead “antitrust standing” and “antitrust injury” (Docket No. 60, p. 14). OCFS also claimed that Plaintiffs did not “properly” plead the existence of an antitrust conspiracy (*Id.*). As is typical in antitrust cases, Defendants also claimed that the only possible relevant market in which the alleged misconduct is to be judged is large -- even international -- and that, therefore, the Complaint does not sufficiently allege injury to competition (Docket No. 60, pp. 6-7). OCFS made this argument by referring to, and unfairly melding, different paragraphs of the Complaint -- some directed at defining the market at issue, and others at setting forth the impact of the antitrust misconduct on interstate

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<sup>10</sup> As Plaintiffs' state law claims were dismissed without prejudice (A-315; A-317), this

commerce (¶¶ 38, 74, 93 and 95).

Focusing on the allegation of joint activity as a basis for liability under Section One of the Sherman Act, OCFS next claimed that there were insufficient facts alleged to plead a conspiracy or joint activity in violation of Section One (Docket No. 60, p. 14).

Cornell emphasized, notwithstanding its submission of extensive factual material, that its motion for dismissal “relies exclusively on the legal insufficiency of plaintiffs’ complaint . . .” (Docket No. 51, p. 10). Cornell also properly, and importantly, recognized that dismissal of complaints *without leave to amend* should only take place “in extraordinary circumstances . . .” (Docket No. 51, p. 10). Cornell even tellingly suggested that the Complaint “may be broadly and liberally construed to alleged [sic] anticompetitive conduct by the Cornell defendants . . .” (Docket No. 51, p. 15).

## 2. **Immunity**

OCFS and Cornell claimed “state action immunity,” with the State acting pursuant to a “clearly articulated and affirmatively expressed state policy” (Docket No. 51, p. 15; Docket No. 60, p. 23). Interestingly, while OCFS claimed that it could not divine the market for “crisis intervention services,” it had little

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section of the brief only addresses Defendants’ motions to dismiss the federal claims.

problem articulating exactly what its activities were in this “market,” insofar as necessary to assert its immunity claim: “In exercising its governmental functions, OCFS requires that private child care providers and residential treatment centers submit for OCFS’ [*sic*] approval their use of force policies when those private child care providers and residential treatment centers initially apply for licenses, and every two years thereafter” (Docket No. 60, p. 23).

Cornell, though admittedly a private university (A-47 - A-48), also claimed state action immunity, alleging that this immunity doctrine extends to it because of “active state supervision of TCI and the other programs as regards their budgeting, staffing, and training curriculum” (Docket No. 51, pp. 13-15).<sup>11</sup>

### **3. Copyright**

In its challenge to Plaintiffs’ copyright claims, OCFS submitted an affidavit by its counsel, Douglas S. Goglia, Esq., annexing agreements and correspondence from OCFS and DFY (A-155 - A-181; Goglia Aff., Exs. A-E).

Cornell likewise appended as exhibits to the Affirmation of its counsel, Nelson E. Roth, Esq., factual materials relating to the origins of Cornell’s TCI program, even going so far as to create a comparison chart with aspects of HWC’s

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<sup>11</sup> Cornell submitted a 1994 “Memorandum of Agreement” (“MOA”) between Cornell and OCFS, contending that it was thereby cloaked in state action immunity by virtue of its “relationship” with OCFS (A-141 - A-154).



1984 “Behavior Management System Manual” (A-46 - A-154 ; Roth Aff., Exhibits A-F).

**C. The Decision Below**

Oral argument took place on February 25, 2005 (A-264 - A-295), and on September 29, 2005, the District Court issued a memorandum decision and order, reported at 227 F.R.D. 175 (N.D.N.Y. 2005) (A-296 - A-315).

The Court accepted that Plaintiffs alleged violations of both Sections One and Two of the Sherman Act, including restraint of trade, monopolization and conspiracy to monopolize (A-299).

In analyzing the Complaint, the District Court made the following observations:

This action was prompted in part by an apparent policy change at OCFS wherein OCFS now *refuses to allow agencies to submit use of force policies other than the policy promulgated by TCI*. *Id.* at ¶¶ 34, 36. This policy change, allegedly attributable to OCFS, Cornell, the College and TCI, “insure[s] that the State's program *has exclusive access to the market*.” *Id.* at ¶ 73. “OCFS has created an environment whereby private child care providers *can only use TCI as their use of force training provider* or risk their license and ability to do business within the State of New York.” *Id.* at ¶ 88. This *precludes plaintiffs and other vendors from the marketplace* and creates a TCI monopoly in providing child restraint training services. *Id.* at ¶ 90.

(A-302 - A-303; emphasis added).

Later in the decision, the Court wrote:

In short, plaintiffs allege that the Cornell defendants developed the TCI program which the state defendants *require child care providers* to purchase. Thus, these defendants have participated or acquiesced in a plan whereby TCI obtained a monopoly over the right to train private child care providers in New York State. (Complaint at ¶ 95.)

(A-306; emphasis added).

For purposes of the motion, the Court also

presumed that *OCFS refuses to grant approval of physical restraint programs other than TCI. OCFS therefore effectively exercises the child care providers' market choice in service providers.*

(A-312; emphasis added).

Notwithstanding the District Court's own above-quoted references to *collective conduct* by Defendants and "preclu[sion of] plaintiffs and other vendors *from the marketplace*" (A-303; emphasis added), as well as the fact that the Private Foster Agencies are the purchasers (*i.e.*, the "*child care providers' market choice*" (A-312; emphasis added)), the District Court nevertheless characterized the entirety of Plaintiffs' antitrust allegations as only setting forth "illegal exclusive contracting"

by OCFS (A-312).<sup>12</sup>

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<sup>12</sup> Thus, the Court also found that “the product market has been defined [by Plaintiffs] to include only the purchases of OCFS” (A-312). And, still elsewhere, wrote that “[a]ny anticompetitive effect resulting from allegedly biased purchasing decisions in the market must reflect the total demand for restraint services as a whole, *not just OCFS’s demand*” (A-313).

Thus, although Plaintiffs alleged a market consisting of supplying restraint training to New York Private Foster Agencies (called “providers” in the Court’s decision (A-312)), the Court focused only on *OCFS* as the buyer, not the Private Foster Agencies. For example, the Court concluded that Plaintiffs’ market definition “is not a proper antitrust market as it is defined in terms of *the purchase(s) of a single -buyer, OCFS*” (A-312; emphasis added).<sup>13</sup> Elsewhere, the Court again characterized the market impacted by the alleged misconduct as “*the purchases of OCFS*” (A-313; emphasis added). Still elsewhere, the Court, again viewing OCFS as a “purchaser,” wrote that “OCFS, as a participant or consumer in the restraint services market, has simply entered into an *exclusive contract* with Cornell defendants” (A-313; emphasis added). Furthermore, the Court referred to *OCFS* (*i.e.*, not the Private Foster Agencies) as a “consumer in the restraint services market” (A-313) and stated that “the product market has been defined to include only the *purchases of OCFS*” (A-313; emphasis added).

The Court made the above findings despite the Complaint’s allegations that the Private Foster Agencies are the buyers of restraint training, not OCFS itself (¶ 88-89). OCFS regulations confirm this. 18 N.Y.C.R.R. § 441.3(c).

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<sup>13</sup> The Court relied on an extemporaneous statement made by Plaintiffs’ then counsel during oral argument to the effect that the market was “the OCFS market” (A-313).

Indeed, the District Court was obviously struggling with the difficult challenge of identifying the market because it relied, in the section of the opinion discussing the relevant *geographic* market, on Plaintiffs' own description of Private Foster Agencies as the real "consumers of training services" (A-314), finding too "constrained" Plaintiffs' definition of the geographic market as "child care providers [in New York State]" (A-314) (meaning New York Private Foster Agencies).<sup>14</sup> Elsewhere, however, the Court itself described the market as consisting of "OCFS child care providers" (A-313).

With respect to the Defendants' state action immunity defense, the Court held:

In the instant case, it is not necessary to delve into the complex and murky analysis of whether or not the state exercises sufficient control over the agency for it to be deemed an arm of the state or the intended scope of the legislative regulatory authority conferred on agency.

(A-309; footnotes omitted).

Judge Hurd dismissed all of Plaintiffs' federal claims with prejudice, dismissed the state law claims without prejudice, and ordered immediate entry of

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<sup>14</sup> One source of confusion, even for counsel, has been that while DFY directly "operates" juvenile detention facilities, OCFS only "supervises" Private Foster Agencies in their provision of foster care (A-300).

judgment (A-315). This appeal ensued.

### **SUMMARY OF ARGUMENT**

The essence of Plaintiffs' Sherman Act Section One claims is that Cornell and OCFS have combined to force all the Private Foster Agencies in New York to refuse to deal with any restraint training providers except Cornell, thus excluding all vendors of restraint training from the market of the Agencies, as buyers of restraint training (¶¶ 71, 88-90). Furthermore, the anticompetitive conduct of Cornell and OCFS also essentially falls into the category of actions forbidden by Section Two, including a conspiracy to monopolize and monopolization.

While Plaintiffs readily concede that their initial Complaint was not a model of clarity and was even unartful, it nevertheless gave sufficient notice of serious violations of the antitrust laws by Cornell and OCFS to withstand a motion to dismiss. And it most certainly did so in sufficient detail to avoid a dismissal with prejudice. Indeed, "construed as a whole," *Linens of Europe, Inc. v. Best Manufacturing, Inc.*, 2004 WL 2071689 (S.D.N.Y. Sep. 16, 2004), citing *Yoder v. Orthomolecular Nutrition Institute Inc.*, 751 F.2d 555, 562 (2d Cir. 1985), the Complaint adequately put the Defendants on notice of their antitrust claims.

There is no heightened pleading requirement for antitrust complaints. *Twombly v. Bell Atlantic Corp.*, 425 F.3d 99, 107 (2d Cir. 2005). Moreover, the decision below bears similarity to the dismissal with prejudice (but of an already-amended complaint) in *Discon Inc. v. Nynex Corp.*, 93 F.3d 1055, 1059 (2d Cir. 1996), *reversed on other grounds*, *Nynex Corp. v. Discon, Inc.*, 525 U.S. 128, 119 S.Ct. 493 (1998), where the Second Circuit held, “In this case, we believe that the District Court may have been misled by a poorly drafted complaint into categorizing the arrangement as one that is presumptively legal.”<sup>15</sup>

## **ARGUMENT**

### **POINT I**

#### **THE COMPLAINT SUFFICIENTLY GAVE NOTICE OF ALLEGED VIOLATIONS OF SECTION ONE OF**

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<sup>15</sup> The Second Circuit in *Discon* proceeded to find that the complaint, even though already once amended and then dismissed with prejudice, “states a cause of action under Section One of the Sherman Act, though under a *different legal theory than the one articulated by Discon*.” 93 F.3d at 1059 (emphasis added). Although the Second Circuit was reversed on its substantive ruling regarding antitrust liability, the Supreme Court did not question this Court’s duty to analyze antitrust complaints such that they may “properly be understood to allege arrangements that might be shown to be unlawful . . .” *Id.*

## THE SHERMAN ACT

This Court:

review[s] *de novo* the dismissal of a complaint for failure to state a claim, accepting as true all facts alleged in the complaint and drawing all inferences in favor of the plaintiff. *Todd v. Exxon Corp.*, 275 F.3d 191, 197 (2d Cir. 2001). “A complaint should not be dismissed for failure to state a claim ‘unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” *Id.* at 197-98 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). “At the pleading stage . . . the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.*, 375 F.3d 168, 177 (2d Cir. 2004) (citation, brackets, and internal quotation marks omitted).

*Twombly*, *supra*, 425 F.3d at 106.

At the outset, we emphasize that the District Court misread Plaintiffs’ relevant market allegations and engaged in an analysis that both misapprehended the relationship among Defendants, Plaintiffs (and other vendors of restraint training) and Private Foster Agencies. Therefore, the dismissal, at the pleading stage, was premature. The District Court did not even appreciate the allegations of the Complaint insofar as they characterized the Private Foster Agencies as the buyers (¶¶ 38, 71, 72, 89) -- not OCFS. As the District Court grounded its dismissal solely on its relevant market analysis, we begin with a review of that



subject.

**A. Relevant Market**

The Complaint alleges that the relevant market is “training services to New York State child care providers” (called “Private Foster Agencies” herein) (¶¶ 90, 91, 95). The District Court rejected this market definition, stating that “the agreement must be evaluated in terms of the restraint services market as a whole” (A-313). The District Court elaborated on this by stating:

The market for physical restraint programs includes social service agencies, law enforcement agencies, correctional facilities, educational institutions, and even airlines. Some portion of the program consists of behavior management techniques which may or may not be distinguishable from use of force techniques. It is also apparent that the restraint techniques are not strictly applicable to children.

(A-313).

In essence, the District Court found that the relevant market alleged was “under-inclusive.” *See Todd v. Exxon*, 275 F. 3d 191, 202-207 (2nd Cir. 2001). *Todd*, however, makes clear that a motion to dismiss should not be granted where the market alleged is “plausible.” 275 F.3d at 195, 203. Judge Baer recently

reaffirmed *Todd's* mandate:

To survive a motion to dismiss, a plaintiff need only allege a “plausible” market. *Hack v. President and Fellows of Yale Coll.*, 237 F.3d 81, 86 (2d Cir. 2000) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962)).

*New York Jets LLC v. Cablevision Sys. Corp.*, 2005 U.S. Dist. LEXIS 23763, 2005 WL 2649330, \*5 (S.D.N.Y. Oct. 17, 2005). The District Court below made no mention of *Todd* or *Jets* in its opinion and has ignored their teachings.

The market alleged in the Complaint -- “training services to New York State child care providers” (¶¶ 88-90) -- is not an implausible relevant market. It is evident that the New York-licensed Private Foster Agencies, as buyers of restraint training services, have requirements and strictures that are different from other participants in some larger “restraint training market” (¶¶ 82-84, 89, 91-92).

Indeed, this is clear from the regulatory regime itself. On the *sellers' side* of the alleged relevant market, *i.e.*, those entities that wish to fulfill the Private Foster Agencies' need for obtaining restraint training for their staffs, OCFS has an “approval” role: it must approve the restraint policy of each Private Foster Agency, including its selection of a vendor of this restraint training. 18 N.Y.C.R.R. § 441.17. *See also* “Statement of Facts,” *supra*, Point A.4. (As alleged, of course, instead of approving each Agency's restraint policy on the merits, OCFS has chosen

to *insist* that each Private Foster Agency choose only Cornell as its restraint trainer, thus making its “approval” role an improper “mandatory selection” role (¶¶ 86, 88-89).)

However, OCFS’s role and, in effect, power over the market for this training, does not end with its authority to *de facto* select the training vendor. For on the *buyers’ side* of the relevant market, OCFS also plays an important role: it approves the very existence of a Private Foster Agency. First, as to a new agency, OCFS, as a pre-condition to the Agency’s filing its very certificate of incorporation -- its “birth certificate,” as it were -- must “approve” the Private Foster Agency as a candidate to provide this social service. NY-SSL § 460-a. *See also* “Statement of Facts,” *supra*, Point A.4. Second, OCFS has ongoing authority to visit, inspect and supervise the Private Foster Agencies. *E.g.*, 18 N.Y.C.R.R. § 441.2(b). Moreover, Private Foster Agencies are limited to New York corporations or associations. *Id.* *See also* NY-SSL § 460-a.<sup>16</sup>

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<sup>16</sup> These aspects of the regulatory environment depict the geographic market as well.

Few cases under the Sherman Act deal with such a regulatory regime that so strongly affects both sides of a market, here the market for the service of providing restraint training to Private Foster Agencies in New York State. The regulatory strictures described above, as far as is known, are unique to these Private Foster Agencies (¶¶ 82-84, 89, 91-92). And the definition of the relevant market should reflect that uniqueness. *See Lockheed Martin Corp. v. Boeing Co.*, 390 F. Supp.2d 1073, 1079 n.6 (D. Fla. 2005) (noting that “regulatory barriers” bolster a relevant market finding). *Accord United States v. Rockford Memorial Corp.*, 717 F. Supp. 1251, 1281 (D. Ill. 1990), *aff’d* 898 F.2d 1278 (7th Cir. 1990) (finding that regulatory barriers to entry were significant factors in defining the relevant market).<sup>17</sup>

Thus, the potential purchasers of the training here at issue are the variety of Private Foster Agencies (¶¶ 38, 70, 89) -- and not OCFS itself, as the Court below concluded: “This is not a proper antitrust market as it is defined in terms of the purchase(s) of a single -buyer, OCFS” (A-312). The fact that OCFS participated in the conspiracy does not render it the sole purchaser, as the Court concluded.

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<sup>17</sup> “To the extent that regulation limits substitution, it may define the extent of the market.” P. Areeda & H. Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶ 572 (2004)(hereinafter “Areeda”).

The District Court's incorrect formulation of the relevant market may be freely reviewed on appeal as a matter of law, and it has long been held that "because market definition is a deeply fact-intensive inquiry, courts hesitate to grant motions to dismiss for failure to plead a relevant product market." *Todd, supra*, 275 F.3d at 199-200.

The propriety of the relevant market alleged is also amply demonstrated by the fact that the prices charged and paid in this market are significantly higher than in other markets, probably because of the availability of the Federal reimbursement program which renders the buyers less price sensitive (¶¶ 40, 91-92, 96-97). The buyers (the New York Private Foster Agencies) are also distinct because all are subject to regulation by New York State (¶¶ 84, 86). The actual suppliers (Cornell, acting with OCFS's assistance) and potential suppliers (HWC and others) in this market are also specialized because the regulatory requirements imposed on them are distinct from those in other markets. The factual predicates for these differences are discussed in further detail in the following sections, which discuss the nature of the antitrust violations.

**B. Antitrust Misconduct**

The anti-competitive nature of Defendants' restraint is manifest from the allegations that all actual or potential competitors of TCI are excluded from the

market (¶ 89). At the pleading stage, the District Court must accept the allegations as true, but it did not, ruling “it is not possible to evaluate the effect of the OCFS and TCI arrangement on other service providers or consumers” (A-313).

In the OCFS-Cornell environment, the Complaint makes clear that OCFS has used its regulatory power -- without any apparent effort to review the merits of any prospective vendor of restraint training to Private Foster Agencies -- to coerce their selection of Cornell’s TCI program to the exclusion of all others (¶¶ 83, 86, 88-90).

OCFS does not assert any reasonable economic benefit, such as a cost savings, in engaging in this coercive practice. In fact, there may well be an *unreasonable* incentive to OCFS in that OCFS, while insisting on Cornell’s expensive training program, does not pay for most of it (¶ 92). Instead, OCFS seeks and obtains, as part of a federal *entitlement* program under Title IV-E of the Social Security Act, as much as 75% of the cost of Cornell’s TCI training from the Government. By using the pre-existing CHE “facilities and administrative” overhead, OCFS helps Cornell reap substantial monies for CHE and for itself, as CHE’s administrator (¶¶ 91-92).<sup>18</sup>

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<sup>18</sup> Complaint, ¶¶ 14, 35. *See also Qui Tam* Complaint, discussed *supra*, n. 9, at ¶¶ 98-102, 122. Federal reimbursement may itself be a factor in determining a discrete relevant market and would even strongly support the inference that there is a separate pricing environment. Availability of reimbursement tends to affect prices.

Indeed, given the strong financial incentive OCFS has for maximizing federal reimbursement or grant money for such activities, the Complaint, “construed as a whole,” can be read to assert a claim that OCFS is a market participant, with Cornell using it as its agent, or even co-conspirator (¶¶ 88-89, 91-92). Behind this aggressive abuse of its power, OCFS (and Cornell) have as their aim *higher prices* for the training, *not market prices* (¶¶ 91-92). In such a case, the antitrust misconduct is manifest.

Moreover, the anti-competitive effect of threatened adverse licensing actions by OCFS, unless the Private Foster Agencies accepted Cornell’s TCI training program, is manifest. Therefore, contrary to the District Court’s conclusion, it is here *not* “impossible for a court to assess the anticompetitive effect of [the] challenged practices” (A-311; citing *Re-Alco Industries, Inc. v. National Center for Health Educ., Inc.*, 812 F.Supp. 387, 392 (S.D.N.Y. 1993)).

**1. Suppression of Quality Competition**

To the extent the Cornell Defendants endeavored to legitimize their TCI program by submitting exhibits attesting to the professionalism of its training staff (A-103 - A-123), this cannot overcome, certainly at this stage of the litigation, HWC’s claims that certain Private Foster Agencies have been unimpressed with the quality of TCI training and have sought instead to engage HWC (and other vendors)

to provide restraint training in place of Cornell (§§ 71-72).

The exclusion of HWC and the other vendors certainly indicates a serious restraint on competition in the quality of the training (§§ 71-72, 88-89), even before reaching the issue of the *price* of the training (§§ 40, 91).<sup>19</sup> Indeed, OCFS's interference with -- and outright prohibition of -- a Private Foster Agency's selection of HWC and others as providers of restraint training, notwithstanding the desire of various Agencies to do so, is a patent restraint on competition (§§ 71, 72, 89).

That there can be a substantial variation in quality among the different providers of this training is manifest from an exhibit attached to the Hillside Defendants' January 18, 2005 Reply Declaration of David Bagley in Further Support of Hillside Defendants' Motion to Dismiss or for Summary Judgment (A-227 - A-230). Exhibit E thereto, at A-252-A-257, is a February 12, 2003 article from *New York Teacher* attesting to the selection by New York State United Teachers of HWC's restraint training program over others because "it met more of the needs expressed during focus groups" (A-256). It is represented that TCI competed for this training contract.

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<sup>19</sup> Price is the "central nervous system of the economy," *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 226 n.59, 60 S.Ct. 811, 845, 84 L. Ed. 1129 (1940), and an agreement that "interfere[s] with the setting of price by free market forces" is illegal on its face. *United States v. Container Corp.*, 393 U.S. 333, 337, 89 S. Ct. 510, 512, 21 L. Ed. 2d 526 (1969).



A diminution in the quality of TCI training, from lack of competition, is also manifest from Exhibit C to the October 5, 2004 Affidavit of Nelson E. Roth, Esq., counsel for the Cornell Defendants, showing that Cornell no longer teaches a single-person restraint technique (A-78 - A-102). By their submissions below, Defendants acknowledged that HWC continues to train in this technique (A-61 - A-66; A-253 - A-257), which is important to and sought by Private Foster Agencies (¶¶ 71, 72).

## 2. Impact on Prices

Turning to price, the strong inference from the Complaint is that Cornell's price is higher than that which HWC and the other vendors charge. But even more dramatic evidence that Cornell's enjoyment of exclusive status as the restraint trainer for the Private Foster Agencies has a significant impact on pricing is that Cornell, with OCFS's approval, is charging a multiple of "4 to 10 times" *more than it charges its own other buyers for the same service* (¶¶ 40, 91, 97).<sup>20</sup> Moreover, as noted, there is no procedure in place by which OCFS can make any judgment on the quality of TCI training as compared with other programs. The "selection" by the Private Foster Agencies of Cornell and its TCI program has been

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<sup>20</sup> This allegation was plainly made (¶ 91). Moreover, details of how Cornell accomplished this are set forth in the *Qui Tam* Complaint, Section V.C, ¶¶ 155-173 *et passim*. The multiple may ultimately not be as great as ten, but it is substantial.

fixed for at least twelve years (A-141 - A-154). Nothing in the ongoing, and apparently unending (*see Qui Tam* complaint ¶¶ 111-13), exclusion by OCFS of other vendors in favor of Cornell can be said to be “procompetitive.”

The District Court held that OCFS was the “buyer” and, like any other buyer, could switch suppliers without violating Section One (A-312). Under the regulatory regime presented, however, OCFS, a regulatory “approver,” was *not* the buyer. Rather, the various Private Foster Agencies were the buyers (¶¶ 71, 88-89). Some confusion may have resulted from the fact that, while the Private Foster Agencies are the buyers of restraint training, they are not *autonomous* buyers -- free to choose TCI, on the one hand, *or* HWC and others, on the other hand, based on quality and price (¶¶ 71, 88-89). To the contrary, Cornell -- the seller of its TCI program -- has acted with OCFS to force all the Private Foster Agencies in New York State to buy its program (¶¶ 36, 86-90). This essentially makes OCFS itself an agent -- or co-conspirator -- of Cornell in “selling” the TCI program by the compulsion of its regulatory fiat (without any hint that it has made any determination “on the merits” of the quality of the various programs).

### **3. Antitrust Liability**

Given this factual scenario, several traditional theories of antitrust liability on which to peg Defendants' obviously anticompetitive conduct are

applicable. And certainly, this “complaint may properly be understood to allege arrangements that might be shown to be unlawful.” *Discon, supra*, 93 F.3d at 1059.

We start with the cautionary language of then-Chief Judge Newman in *Discon*, where he observed:

This appeal typifies one of the primary difficulties in the judicial application of antitrust law. Under Section One of the Sherman Act, courts are asked to categorize various complex commercial arrangements into a rigid legal taxonomy, e.g., horizontal restraint, vertical restraint, price-fixing, market division, concerted refusal to deal, and so on. This initial categorization is often outcome-determinative. Under one category, the arrangement may be *per se* illegal, while under another, it may be found permissible under the rule of reason. Due to the complexity of modern business transactions, however, courts often find that commercial arrangements can be classified *theoretically under a number of different categories*. See *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1, 8, 99 S.Ct. 1551, 1556, 60 L.Ed.2d 1 (1979) (“[E]asy labels do not always supply ready answers.”).

*Id.* (emphasis added).

With Judge Newman’s sympathetic viewpoint in mind, this Complaint could ultimately lead to strong evidence of: (1) collective (or “concerted”) refusal to deal (by OCFS and Cornell) with HWC and other vendors who are Cornell’s competitors; (2) conspiracy with a licensor (OCFS) to eliminate competitors (HWC and others); (3) vertical price-fixing by OCFS with Cornell, by virtue of their

control of the market of Private Foster Agencies; and (4) conspiracy and monopolization.

While these theories, or some of them, might fall into a *per se* category, we believe that for purposes of analyzing the anticompetitive nature of Defendants' conduct the market properly can be viewed to take account of the actual anticompetitive effect of the misconduct. As noted, in a regulatory setting, where entry into the market is controlled by the regulating agency (as it is here, by OCFS's requisite "approval," even at the certificate of incorporation stage, of a new Private Foster Agency), the regulated market can be the "relevant" market for purposes of evaluating the misconduct. Indeed, to define a relevant product market, one must look at how buyers view the products in question. *See Westman Commission Co. v. Hobart Int'l, Inc.*, 796 F.2d 1216, 1220 (10th Cir. 1986) ("Any definition of a line of commerce which ignores the buyers and focuses on what the sellers do, or theoretically can do, is not meaningful.") (quoting *United States v. Bethlehem Steel Corp.*, 168 F. Supp. 576, 592 (S.D.N.Y. 1958)); *Federal Trade Commission v. Cardinal Health, Inc.*, 12 F. Supp.2d 34, 46 (D.D.C. 1998) ("The relevant market consists of all of the products that the Defendant's *customers view as substitutes* to those supplied by the Defendants.") (emphasis added). In this sense, the Private Foster Agencies need restraint trainers and, for quality and price

reasons, should be able to choose HWC or another vendor. But HWC and the other vendors can only become “substitutes” when approved by the very Defendants in this antitrust action.<sup>21</sup>

Actions brought under the federal antitrust laws involving conduct by states or by regulatory authorities of states are not common, and the facts presented by such cases do not always or easily fall within the traditional parameters of antitrust liability as developed by the courts. That said, the elements of liability on the part of states and their agencies for anticompetitive actions have become relatively clear. Thus, conspiracy with a licensing authority to eliminate a competitor may also result in an antitrust transgression. *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 706, 82 S.Ct. 1404, 1414 (1962).

The error of the District Court's dismissal with prejudice can be seen from its own reliance on *Evac, LLC v. Pataki*, 89 F. Supp.2d 250 (N.D.N.Y. 2000) (A-314). In *Evac*, the District Court dismissed a complaint alleging that the state providing emergency helicopter ambulance service for *free* was a restraint of trade.

The court found little merit in that allegation, in that any evacuee or person in need

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<sup>21</sup> Even in unregulated markets, the servicing of one, narrow product line can be the relevant market. *Eastman Kodak Co. v. Image Technical Service, Inc.*, 504 U.S. 451, 482, 112 S.Ct. 2072, 2090 (1992).

of emergency medical services requiring use of a helicopter could purchase that service from another vendor, should he so choose. However, analogizing *Evac* to the instant case, it would be as though the state *required* use of its designated helicopter service (here the mandated use of Cornell's TCI program), but *forbade* potential customers from hiring any *other* helicopter services (here, the exclusion of HWC and other restraint training vendors).

In the case at bar, the buyers (Private Foster Agencies) are not being allowed to choose their suppliers (§ 71). The Private Foster Agencies are being forced to use Cornell in order to do business in New York (§§ 36, 86-90). Plaintiffs' claims are not those of a single vendor ousted by an exclusive contract of a state agency with one of its competitors. Instead, this is a case where a horizontal array of multiple purchasers (Private Foster Agencies) is being unlawfully prohibited from purchasing services it is legally entitled to purchase. 18 N.Y.C.R.R. § 441.3(c).

## **POINT II**

### **THE DISTRICT COURT ERRED IN DISMISSING THE SHERMAN ACT SECTION TWO CLAIM**

No elaborate separate analysis is needed to show how the misconduct described above is also actionable under Section Two of the Sherman Act.

Monopoly power is the “power to control prices or exclude competition” in the relevant market. *United States v. E.I. DuPont DeNemours & Co.*, 351 U.S. 377, 391, 76 S.Ct. 994, 1005, 100 L. Ed. 1264 (1956). While it is something more than the market power that is a prerequisite to liability under Section One, *see Digidyne Corp. v. Data General Corp.*, 734 F.2d 336, 1339-41 (9th Cir. 1984), it is present here in abundance because the relevant market analysis has merit.

Clearly, the abuse of the regulatory process by OCFS in favor of Cornell gave them monopoly power, which they continue to use to exclude restraint training vendors from being available to the Private Foster Agencies (§§ 89-90). Their combined effort makes them liable for conspiracy to monopolize and monopolization (§§ 95-98). Thus, in *Surgical Care Center of Hammond, L.C. v. Hospital Service District No. 1 of Tangipahoa Parish*, 171 F.3rd 231, 232 (5th Cir. 1999), the Fifth Circuit *en banc* reversed a panel’s prior affirmance of a dismissal of an antitrust complaint, finding that:

The complaint . . . outlined the implementing path of the [defendant’s] effort [to extend its monopoly], marked by various anticompetitive acts. These acts included pressuring five of the seven largest managed care plans in the market into contracts calculated to exclude St. Luke’s from the market for outpatient surgical care. Specifically, North Oaks allegedly used its monopoly power to ensure that its contracts with the plans included provisions for exclusivity and tying, in violation of the Sherman Act.

### **POINT III**

#### **THE DEFENDANTS ARE NOT IMMUNE AND, IN ANY EVENT, THIS ISSUE SHOULD BE ADDRESSED BY THE DISTRICT COURT ON REMAND**

As the Supreme Court held, “[t]he national policy in favor of competition cannot be thwarted by casting . . . a gauzy cloak of state involvement over what is essentially a private price-fixing arrangement.” *Cal. Ret'l Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 106, 100 S.Ct. 937, 63 L. Ed.2d 233 (1980) (quoted in *Freedom Holdings, Inc. v. Spitzer*, 357 F.3d. 205, 222 (2d Cir. 2004)). The same, of course, is true of any antitrust misconduct.

The District Court addressed the defense of state action immunity, claimed by Cornell as well as OCFS. While stopping a bit short of a “holding,” the Court rightly doubted whether Defendants could meet the tests of being an arm of the state (certainly not true for Cornell and unlikely as to OCFS), or of carrying out anticompetitive practices that are somehow authorized by the state, the latter test requiring “a more searching analysis” (A-307- A-310).

We respectfully suggest that, given the scant record below, the issue of immunity be addressed by the District Court on remand.



#### POINT IV

### **EVEN IF THIS COURT FINDS PLAINTIFFS' ANTITRUST ALLEGATIONS WANTING, A REMAND WITH LEAVE TO REPLEAD IS THE ONLY REMEDY CONSISTENT WITH THE FEDERAL RULES AND THE APPLICABLE STANDARD**

Based on the arguments in this Brief, Plaintiffs submit that their Complaint was sufficient to withstand the dismissal motions aimed at them below, especially given that there is no heightened pleading standard for antitrust cases. While there may be a dispute about the overall precision and clarity of the Complaint, one thing is clear beyond peradventure of doubt: motions to dismiss with prejudice are almost *never* granted when such motions are filed against plaintiffs' *first* complaint, and no motion is granted with prejudice in such circumstances without a finding that any further pleading would be "futile" -- a finding not made here.

The obvious starting point for granting leave to Plaintiffs to replead is Fed. R. Civ. P. 15(a), holding that such "leave shall be freely given when justice so requires." In its decision below, the District Court gave no explanation for why leave to replead was not given. Indeed, the Court did not engage in any discussion of the standard for a dismissal with prejudice.

Antitrust complaints, with sometimes difficult relevant market questions, easily present circumstances under which leave to replead, at least

once,<sup>22</sup> should be granted. Final dismissals in such instances “should be granted very sparingly.” *Todd, supra*, 275 F.3d at 198. The reason for this caution in ending an antitrust case too early is that the “proof is largely in the hands of the alleged conspirators . . . .” *Hospital Building Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 746-47, 96 S.Ct. 1848 (1976), quoting *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 473, 82 S.Ct. 486 (1962).

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<sup>22</sup> *See, e.g., Discon, supra*, 93 F.3d at 1059 (reversing dismissal of amended complaint with prejudice because “poorly drafted” complaint “may properly be understood to allege arrangements that *might be shown* to be unlawful” even under different theories than plaintiff had advanced) (emphasis added).

Accordingly, however much this Court delves into the OCFS-Cornell arrangement on this appeal, Plaintiffs should be entitled, at the very least, to replead their claims in an amended complaint.<sup>23</sup>

## **POINT V**

### **THE DISTRICT COURT ERRED IN DISMISSING PLAINTIFFS' COPYRIGHT CLAIMS**

#### **A. Background**

In 1997, DFY and Chapman entered into an agreement for the provision of training to DFY staff in restraint techniques (the "Agreement") (A-163-A-171).<sup>24</sup> The Agreement commenced May 1, 1997 and contained a termination date of August 31, 1997 (A-163). Pursuant to the Agreement, Chapman provided to DFY copyrighted training materials, including manuals and audio visual materials, which DFY was given permission to reproduce (A-164).

The Agreement was entered into after a catastrophic injury, and subsequent death, of a child in DFY's care resulted in a 1996 action against DFY

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<sup>23</sup> The same leave to replead should also be granted as to Plaintiffs' copyright claims.

<sup>24</sup> The same parties entered into a similar agreement, of three months' duration, on January 1, 1988 (A-157 - A-162). That agreement is not at issue in this case.

and its Commissioner, alleging, among other claims, failure to train on the proper use of restraint (§§ 26, 58). *See Jackson v. Johnson*, 118 F. Supp.2d 278 (N.D.N.Y. 2000) (Hurd, J.).

DFY, in its Request for Bid, asked for “rights to reproduce any and all materials” (A-179). DFY also specified a four-month term for the proposed agreement, with the option to extend it for two additional four-month terms (A-179). Chapman’s subsequent handwritten bid offered “preparation & delivery of 12 days of training for approximately 120 trainers,” including the “right to reproduce all materials & *option to extend*” (A-179; emphasis added).<sup>25</sup> Chapman’s handwritten bid was submitted on the Request for Bid form generated by the New York State Executive Department, Division for Youth, and resulted in the 1997 Agreement, which was *drafted by DFY*, as explained in more detail below.

The Agreement specified that Chapman “acknowledges and agrees that the Division has the right to reproduce all training materials” (A-164: Section II.C) and that the Agreement would “end August 31, 1997” (A-163: Section I). A further provision specified that the Agreement “may be extended for two (2) additional four (4) month periods from the termination date of August 31, 1997 upon the same

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<sup>25</sup> If Chapman thought the license to reproduce his materials was perpetual, there would be no reason for him to handwrite “with option to extend” (A-179).

terms and conditions” (A-166 - A-167: Section IV.J). The Agreement was never extended.

As a supplement to the Agreement, and to further clarify its terms, Chapman drafted a “Handle With Care Program Participant Release From Responsibility Agreement” (hereinafter “DFY Trainer Agreement”), specifying that the HWC certification obtained by each DFY trainer pursuant to the Agreement expired after one year (A-181).<sup>26</sup> Every DFY trainer who became certified in HWC’s program signed the DFY Trainer Agreement, including DFY’s Director of Training, Margaret Davis (*Id.*).

Plaintiffs’ Complaint alleged that DFY (now OCFS) continued to reproduce Plaintiff’s training materials beyond the expiration date of the Agreement, and has continued to permit Division Trainers to train DFY staff in

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<sup>26</sup> To the extent the certification to train (lasting one year) includes, implicitly, a right to “reproduce” HWC’s copyrighted materials, then Defendants could argue that the right to reproduce continued, as to the certified trainers, for one year, although Plaintiffs’ position is that the right to reproduce ended with the expiration date of the Agreement. Such discrepancies among the documents executed by the parties indicate that ambiguities existed which could only properly be resolved by evaluating documents and testimony extrinsic to the Agreement, particularly because the Agreement had no integration clause.

HWC's program beyond the expiration date of the Agreement (§§ 53-54).

**B. The District Court's "Findings of Fact"**

As noted, in evaluating a motion to dismiss under Rule 12(b)(6), the District Court must "accept the facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff." *Broder v. Cablevision Sys. Corp.*, 418 F.3d 187, 196 (2d Cir. 2005) (citing *Freedom Holdings, supra*, 357 F.3d at 216). A complaint should not be dismissed unless it appears to a certainty that plaintiff is entitled to no relief under any statement of facts which could be proved in support of the claim. *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.*, 375 F.3d 168, 176-177 (2d Cir. 2004). Furthermore, on such a motion, the District Court should resolve any contractual ambiguities in favor of the plaintiff. *Subaru Distributors Corp. v. Subaru of America, Inc.*, 425 F.3d 119, 122 (2d Cir. 2005). Finally, in deciding a Rule 12(b)(6) motion to dismiss a breach of contract claim, the Court's role is not to resolve ambiguities in the language of the contract. *DKR Capital, Inc. v. AIG Int'l W. Broadway Fund, Ltd.*, 2003 U.S. Dist. LEXIS 17498, 2003 WL 22283836 at \*4 (S.D.N.Y. Oct. 2, 2003).

The District Court based its dismissal with prejudice of Plaintiff's copyright claims on the following findings of fact, all of which are contradicted by the allegations in the Complaint:

Despite plaintiffs' repeated assertions, the [Agreement] simply does not contain a provision limiting this license to use the materials to one-year *or any other duration of time*. The [Agreement], drafted by Chapman, is clear and unambiguous. Plaintiffs do not argue that it suffers any legal defect or otherwise attack the validity of the [A]greement. Plaintiffs never assert that any other representations were made or agreed upon extraneous to the [Agreement].

(A-305; emphasis added).

First, the maximum one-year potential duration of the Agreement (A-163) (including the two potential extension periods provided for in Section IV.J (A-166)) applied to each term therein -- including the license Chapman granted DFY to copy his copyrighted materials (A-164) and train its staff in HWC's program (A-181). The District Court erroneously found Plaintiffs' allegations concerning the one-year duration of the license granted to DFY pursuant to the Agreement untenable as a matter of law (A-305).

Second, the District Court incorrectly -- and (again) in direct conflict with the allegations in the Complaint (¶ 61) -- found that the Agreement was "drafted by Chapman" (A-305).

Third, the Court made an unsupported finding that the Agreement was "clear and unambiguous" on its face, despite the obvious discrepancy and alleged

resultant ambiguity regarding the Agreement's duration (A-305).<sup>27</sup> Again, the Agreement itself contains no integration clause.

These findings are clearly controverted by Plaintiffs' allegations in their Complaint (¶ 51) and, thus, were wholly inappropriate for the District Court to make at the pleading stage. This Court should reinstate the Complaint and remand to the District Court with a direction that the Agreement, and DFY's license to use HWC's program and program materials, expired on August 31, 1997 or, at the latest, April 30, 1998, or at least that the question presents a triable issue.

**C. There Is No Basis For The District Court's Finding that the License Granted to DFY to Reproduce Chapman's Training Materials Was Not Limited to the Term of the Agreement**

Plaintiffs unquestionably satisfied the basic pleading requirements of a copyright infringement claim by alleging that: 1) they own a valid copyright in an original work; and 2) the State Defendants copied such work. *See Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361, 111 S.Ct. 1282 (1991); *Matthew Bender & Co., Inc. v. West Publishing Co.*, 158 F.3d 674, 679 (2d Cir. 1998). In its decision, the District Court noted that “[i]t is not disputed that the

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<sup>27</sup> Plaintiffs objected to the documents submitted by OCFS that were not incorporated or relied upon in the Complaint, such as the 1988 agreement between the parties described in note 24, *supra*, and correspondence related thereto (A-212, A-262-A-263).



state defendants copied [Plaintiffs'] materials" (A-304). Accordingly, the District Court should not have dismissed the copyright claims at the pleading stage. Certainly, the District Court was premature in finding that Plaintiffs "have not *demonstrated* a limitation on defendants['] non-exclusive license to reproduce [Plaintiffs' training] materials" (A-306; emphasis added).

Plaintiffs alleged that the Agreement granted DFY a non-exclusive right to reproduce the subject training materials for the duration of the Agreement (§§ 50-51). There is simply no basis for the District Court's interpretation that a contract with clearly defined commencement (May 1, 1997) and termination (August 31, 1997) points (A-163) should not be so limited as against both parties to it.

In reaching its decision, the District Court focused only on the specific license clause contained in Section II.C giving DFY the right to reproduce all training materials (A-164), without taking into account the equally clearly defined temporal limitation in Section I which states that the Agreement shall commence "May 1, 1997 and end August 31, 1997" (A-163). To read Section II without taking into account the term of the Agreement creates an internal conflict within the Agreement.

This reading also goes against canons of contract construction

whereby “a court should not ‘adopt an interpretation’ which will operate to leave a ‘provision of a contract . . . without force and effect.’” *Laba v. Carey*, 29 N.Y.2d 302, 308, 277 N.E.2d 641, 327 N.Y.S.2d 613 (1971) (internal citations omitted). *See also Eighth Ave. Coach Corp. v. City of New York*, 286 N.Y. 84, 88, 35 N.E.2d 907, 909 (1941) (citing as a “fundamental canon of construction” that a “contract must be read as a whole in order to determine its purpose and intent, and that single clauses cannot be construed by taking them out of their context and giving them an interpretation apart from the contract of which they are a part”); *Fleischman v. Furgueson*, 223 N.Y. 235, 239, 119 N.E. 400, 401 (1918) (“In construing a contract the whole instrument must be considered and from such consideration a conclusion reached as to what the parties intended to do or sought to accomplish.”). It is well-settled that a written contract must be read as a whole and every part interpreted with reference to the whole, with preference given to reasonable interpretations. *W.W.W. Associates, Inc. v. Giancontieri*, 77 N.Y.2d 157, 162-163 (1990).

The court relied on *Graham v. James*, 144 F.3d 229, 236 (2d Cir. 1998) for the proposition that “[a] copyright owner who grants a nonexclusive license to use his copyrighted materials waives his right to sue the licensee for copyright infringement” (A-304; bracketed material in original). However, this rule is inapplicable here because DFY’s right to reproduce HWC’s copyrighted

material *expired* at the expiration date of the Agreement. *See Kamakazi Music Corp. v. Robbins Music Corp.*, 684 F.2d 228, 230 (2d Cir. 1982).

Moreover, courts are reluctant to interpret any contract so as to infer a perpetual duration of a transfer or license of a copyright without specific contractual language to that effect. *See United States Surgical Corporation v. Oregon Medical & Surgical Specialties, Inc.*, 497 F. Supp. 68, 71 (S.D.N.Y. 1980) (refusing to infer a perpetual obligation even where a contract did not contain a specific temporal limit); *Boyle v. Readers Subscription, Inc.*, 481 F. Supp. 156, 158 (S.D.N.Y. 1979). If the parties intend that the obligation be perpetual, they must expressly say so. *Warner-Lambert Pharmaceutical Co., v. John J. Reynolds, Inc.*, 178 F.Supp. 655, 661 (S.D.N.Y. 1959). Thus DFY's license to copy Plaintiffs' materials expired on August 31, 1997 (A-163).

Finally, the District Court erred by attributing the drafting of the Agreement to Chapman (A-305). The Complaint clearly alleged that the Agreement was drafted by DFY (¶ 61). Factual allegations contained in the Complaint must be accepted as true. *Courtenay Communs. Corp. v. Hall*, 334 F.3d 210, 213 (2d Cir. 2003). Even a cursory examination of the Agreement reveals that it was drafted by DFY, as it contains non-negotiable, boilerplate "Standard Clauses For All New York State Contracts," and was even prepared on "Form DFY-3103

(Rev 4/92)” (A-169 - A-171). Moreover, the District Court acknowledged that Margaret Davis, DFY’s Director of Training, “worked on the terms of the [A]greement” (A-301).

New York contract law follows the rule that ambiguities in contracts are generally construed against the drafter. *Sheppard v. Beerman*, 18 F.3d 147, 150 (2d Cir. 1994); *Jacobson v. Sassower*, 66 N.Y.2d 991, 993 (1985). Plaintiffs alleged that the expiration date in Section I of the Agreement was not ambiguous, and applied to all other provisions of the Agreement, such as DFY’s obligation to continue to pay for training. Nevertheless, should the District Court have considered the term of the license ambiguous, it should not have dismissed the Complaint, and instead should have afforded Plaintiffs’ allegations every favorable inference, given the fact that Plaintiffs alleged that DFY drafted the Agreement (¶ 61). Only Plaintiffs merit favorable inferences and constructions on a motion to dismiss. *Sheppard*, 18 F.3d at 150.

### **CONCLUSION**

For the foregoing reasons, the decision of the District Court should be reversed, its judgment vacated and the matter remanded to the District Court for the purpose of granting leave to Plaintiffs-Appellants to replead their claims in an

amended complaint.

Dated: New York, NY  
July 10 , 2006

Respectfully submitted,

GUY L. HEINEMANN, P.C.

By: \_\_\_\_\_  
Guy L. Heinemann  
Irene M. Vavulitsky  
260 Madison Avenue  
New York, NY 10016  
Tel.: (212) 753-1400

*-and-*

OFFICE OF HILARY ADLER

By: \_\_\_\_\_  
Hilary Adler  
184 McKinstry Road  
Gardiner, NY 12525  
Tel.: (845) 255-4031  
Fax: (845) 256-0094

*Attorneys for Plaintiffs-Appellants*

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 11,767 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect in Times New Roman 14-Point type.

Dated: New York, NY  
July 10, 2006

GUY L. HEINEMANN, P.C.

By: \_\_\_\_\_  
Guy L. Heinemann  
Irene M. Vavulitsky  
260 Madison Avenue  
New York, NY 10016  
Tel.: (212) 753-1400

*Attorneys for Plaintiffs-Appellants*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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BRUCE CHAPMAN; and  
HANDLE WITH CARE BEHAVIOR  
MANAGEMENT SYSTEM, INC.

Plaintiffs

-against-

NEW YORK STATE DIVISION FOR YOUTH;  
NEW YORK STATE DEPARTMENT OF SOCIAL  
SERVICES; NEW YORK STATE OFFICE OF  
CHILDREN & FAMILY SERVICES; JOHN JOHNSON,  
Commissioner of New York State Office of Children and Family  
Services and former Commissioner of the New York State  
Division for Youth, in his official and individual capacity;  
MARGARET DAVIS, former Director of Training for the New  
York State Division for Youth, and former Director of Training for  
New York State Office of Children and Family Services, in her  
official and individual capacity; PATSY MURRAY, former  
Associate Training Technician for the New York State Division  
for Youth, and current position as Trainer for New York State  
Office of Children and Family Services, in her official and  
individual capacity; CORNELL UNIVERSITY; JEFFREY  
LEHMAN, President of Cornell University, in his official and  
individual capacity; HUNTER RAWLINGS III, former President of  
Cornell University, in his official and individual capacity; NEW  
YORK STATE COLLEGE OF HUMAN ECOLOGY; FAMILY LIFE  
DEVELOPMENT CENTER; RESIDENTIAL CHILD CARE  
PROJECT; THERAPEUTIC CRISIS INTERVENTION;  
MARTHA HOLDEN, Project Director of the Residential Child  
Care Project and Therapeutic Crisis Intervention Trainer and  
Coordinator, in her official and individual capacity; MICHAEL  
NUNNO, Project Director of the Residential Child Care Project  
and Therapeutic Crisis Intervention Trainer and Coordinator, in  
his official and individual capacity; HILLSIDE  
CHILDREN'S CENTER; DENNIS RICHARDSON, President and  
CEO of Hillside Children's Center, in his official and individual  
capacity; DOUGLAS BIDLAMAN, Employee of Hillside  
Children's Center and Therapeutic Crisis Intervention Trainer, in  
his official and individual capacity; JOHN DOE 1 through 99

Index No:

COMPLAINT

Filed:

Assigned To:

Defendants

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## JURISDICTION AND VENUE

1) Plaintiffs bring this action for treble damages and injunctive relief for violations of the federal copyright laws, 17 U.S.C. A. §§501, 502, 503, 504, 505 & 511, the federal antitrust laws 15 U.S.C.A. §§1, 2 and violations of civil rights under color of law pursuant to 42 U.S.C.A. 1983, for misappropriation of confidential business information and for tortuous interference with actual and prospective business relationships. The Court has jurisdiction over this action pursuant to 15 U.S.C.A. §§15 and 26, 28 U.S.C.A §§1331, 1343, 1337 and under principals of supplemental jurisdiction, 28 U.S.C.A. §1367.

2) Venue is proper in the Northern District of New York under 15 U.S.C.A. §§15 and 22 and 28 U.S.C.A. §§1391 and 1400.

## PARTIES

3) Plaintiff, Bruce Chapman, is the president of Handle With Care Behavior Management System, Inc. and resides in New York.

4) Plaintiff, Handle With Care Behavior Management System, Inc. (“HWC”) is a New York Corporation with its principal place of business in Gardiner, New York. At all times relevant herein, it was engaged in providing crisis intervention services in interstate commerce. Bruce Chapman and Handle With Care Behavior Management System, Inc. are collectively hereinafter referred to as “Plaintiff”.

5) Defendant, New York State Division for Youth (“DFY”), on information and belief was a New York State Agency that operated juvenile facilities until 1998.

6) Defendant, New York State Department of Social Services (“DSS”), on information and belief was a New York State Agency that licensed, regulated and supervised child care providers until 1998.

7) Defendant, New York State Office of Children and Family Services (“OCFS”), on information and belief is a New York State Agency that from 1998 assumed the functions and obligations of DFY and DSS.

8) Defendant, John Johnson, individually and in his capacity as former Commissioner of New York DFY, Commissioner of New York State OCFS. On information and belief John Johnson resides in New York.

9) Defendant, Margaret Davis, individually and in her capacity as former Director of Training for New York DFY, and former Director of Training for New York OCFS. On information and belief Margaret Davis resides in North Carolina.

10) Defendant, Patsy Murray, individually and in her capacity as former Associate Training Technician for New York DFY, and current position as Trainer for New York OCFS. On information and belief Patsy Murray resides in New York.

11) Defendant, Cornell University, is a New York Not For Profit Corporation with its principal place of business in Ithaca, New York.

12) Defendant, Jeffrey Lehman, individually and in his capacity as the President of Cornell University. On information and belief Jeffrey Lehman resides in New York.

13) Defendant, Hunter Rawlings III, individually and in his capacity as the former President of Cornell University. On information and belief Hunter Rawlings III resides in New York.

14) Defendant, New York State College of Human Ecology, on information and belief is a Statutory College of the State University of New York formed by the New York State legislature.

15) Defendant, Family Life Development Center, on information and belief is a subsidiary of Cornell University New York State College of Human Ecology.

16) Defendant, Residential Child Care Project, on information and belief is a subsidiary of Cornell University and New York State College of Human Ecology.

17) Defendant, Therapeutic Crisis Intervention (“TCI”), on information and belief is a subsidiary of Cornell University and New York State College of Human Ecology.

18) Defendant, Martha Holden, individually and in her capacity as the Project Director of the Residential Child Care Project and Therapeutic Crisis Intervention Trainer and Coordinator. On information and belief Martha Holden resides in New York.

19) Defendant, Michael Nunno, individually and in his capacity as the Project Director of the Residential Child Care Project and Therapeutic Crisis Intervention Trainer and Coordinator. On information and belief Michael Nunno resides in New York.

20) Defendant, Hillside Children's Center ("HCC"), on information and belief is a New York Not For Profit Corporation with its principal place of business in Rochester, New York.

21) Defendant, Dennis Richardson, individually and in his capacity as the President and CEO of HCC. On information and belief Dennis Richardson resides in New York.

22) Defendant, Douglas Bidleman, individually and in his capacity as the Coordinator for Sociotherapy Training at HCC. On information and belief Douglas Bidleman resides in New York.

#### FACTUAL ALLEGATIONS

23) New York State DFY was the agency responsible for the regulation, organization and operation of state-owned juvenile facilities throughout New York until 1998. New York State DSS was the agency responsible in New York for the regulation, licensing and supervision of child care providers until 1998. In 1998 DFY merged with parts of DSS to form OCFS.

24) Prior to 1998, DFY was responsible for the care and welfare of all the juveniles in state's custody. The particular responsibility pertinent in this action was DFY's obligation to create procedures and train staff in techniques to physically restrain juveniles in certain circumstances; for example when a

juvenile threatened immediate injury to themselves, a DFY staff member or other juveniles.

25) On information and belief DFY created a use of force policy that determined when restraint techniques could be applied.

26) Between 1994 and 1996 DFY staff, using the DFY physical force procedures, inflicted permanent catastrophic mental and physical injuries on one juvenile and killed another.

27) On information and belief, to avoid further injury or death, DFY retained HWC to provide a safe use of force program and to train DFY staff in that program which included restraint techniques.

28) HWC trained DFY staff and licensed DFY to use HWC's program and techniques for one year commencing at the date of training.

29) On information and belief, DFY misappropriated HWC's property, program and techniques after the license period expired.

30) On information and belief, after DFY merged into OCFS, OCFS misappropriated HWC's property, program and techniques.

31) When DFY merged with DSS, OCFS assumed responsibility for the regulation, licensing and supervision of private child care providers.

32) Pursuant to New York State regulations, private child care providers and residential treatment centers are required to submit for OCFS's approval a use of force policy at the time of license application and every two years thereafter.

33) Child care providers and residential treatment centers frequently employ vendors like HWC to provide a use of force program and train staff.

34) Upon information and belief, OCFS has violated its own regulations by systematically refusing to allow agencies to submit use of force policies.

35) Upon information and belief, OCFS developed its own use of force program in conjunction with Cornell University and the State of New York College of Human Ecology. This program is called TCI and is owned by the State of New York and administered and controlled by Cornell University.

36) Upon information and belief, OCFS unlawfully compels private child care providers to use TCI as their use of force/behavior management training/crisis intervention training provider.

37) Upon information and belief, TCI revised its program illegally incorporating techniques, methods, materials and information unique to and identified with HWC's program and training.

38) TCI's theft coupled with OCFS's disallowance of private child care provider's ability to contract with vendors other than TCI gives the State of New York, Cornell University and TCI a monopoly situation within the State of New York.

39) Upon information and belief, federal monies through grants and matching funds are being used to fund payment for TCI's training services to New York State child care providers.

40) Upon information and belief, TCI is currently charging the State of New York 4-10 times the amount that it charges out of state customers for the same services.

41) HWC routinely competes with TCI for contracts. TCI's current possession and use of property stolen from HWC is giving them an unfair advantage in obtaining new and maintaining their old contracts.

**CAUSES OF ACTIONS AGAINST DEFENDANTS OCFS, DFY, DSS, JOHN JOHNSON, MARGARET DAVIS, AND PATSY MURRAY IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES**

**FIRST CAUSE OF ACTION: COPYRIGHT INFRINGEMENT  
Federal court jurisdiction under federal copyright act of 1976 as amended 17 U.S.C.A §§101 et seq. and Judicial Code 28 U.S.C.A. 1338**

42) Paragraphs 1 through 41 are incorporated herein by reference as though fully set forth here.

43) Plaintiff is a citizen of the United States and is the author and owner of the copyright of a series of manuals and audio visual productions on the topic of crisis intervention as well as the owner of all copyright derivative rights including presentational rights associated with the aforementioned manuals and videos.

44) On June 7, 1984, Bruce Chapman obtained registration 1-TX36499 of the copyright of the trainer's manual titled "Handle With Care – A Revolutionary Approach to Behavior Management". Derivative works include a performance based training program, updated manuals and numerous audio

video productions. All significant updates in tangible materials have been deposited with the Register of Copyrights and have since supplemented the original work.

45) At all times Plaintiff had copyright notification affixed to the front cover of all written materials stating “©HANDLE WITH CARE. All rights reserved. None of the contents of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means (electronic, mechanical, photocopying, recording or otherwise) without the prior written permission of HWC.”

46) On information and belief, OCFS (formerly DFY), without license, assignment or permission, took Plaintiff’s copyrighted materials, and has been reproducing such protected materials without Plaintiff’s license, authorization, permission or compensation to Plaintiff.

47) Plaintiff has given notice that OCFS’s activities constitute infringement of Plaintiff’s copyright, and OCFS has continued such activities notwithstanding.

48) Plaintiff has been damaged as a result of OCFS’s activities.

## **SECOND CAUSE OF ACTION: BREACH OF CONTRACT**

49) Paragraphs 1 through 48 are incorporated herein by reference as though fully set forth here.



50) On or about April 23, 1997 a contract was entered into between Plaintiff and DFY, whereby Plaintiff agreed and did in fact deliver 12 days of training, certify DFY staff as instructors and provide written and audio visual training materials.

51) The contract provided that DFY to reproduce such written and audio visual materials for the benefit of its trainers and staff for a period of one year commencing on the date of training and ending on the training's one year anniversary.

52) The contract also provided that DFY trainers could train DFY staff in Plaintiff's program for a period of one year commencing on the date of training and ending on the training's one year anniversary.

53) On information and belief, DFY (now known as OCFS) has continued to reproduce said written and audio visual materials beyond the time allowed in the contract.

54) On information and belief, DFY (now known as OCFS) has continued to allow its staff to train others in Plaintiff's program beyond the time allowed in the contract.

55) Plaintiff learned of defendant's breach in 2003.

56) Plaintiff has not been compensated for DFY's continued reproduction of Plaintiff's proprietary materials precipitating damages in the estimated amount of at least \$160,000.00.

### **THIRD CAUSE OF ACTION: FRAUD**

57) Paragraphs 1 through 56 are incorporated herein by reference as though fully set forth here.

58) On information and belief, prior to contracting for Plaintiff's services, DFY had two significant restraint incidents. The first occurred in 1994 where staff was restraining a juvenile and the juvenile died. The second was in 1996 where staff was restraining a juvenile and the juvenile incurred permanent catastrophic mental and physical injuries.

59) On information and belief, to avoid further catastrophic injury or death, DFY decided to retain HWC to provide a safe use of force program and to train DFY staff in that program.

60) DFY's then Director of Training, Margaret Davis, contacted Bruce Chapman, president of HWC and represented that DFY would like to contract for his program materials and training services.

61) Terms were reached whereby Plaintiff would train and provide written and audio visual training materials to DFY that DFY would be allowed to reproduce for a period of one year from the date of training and were reduced to a written contract drafted by DFY.

62) Plaintiff also obtained signed contracts from each DFY staff person trained pursuant to the aforementioned contract, including former Director of Training, Margaret Davis. In this contract each staff person trained acknowledged that their ability to train Plaintiff's program terminated one year post training.

63) Plaintiff relied on the contract generated from DFY specifying a one year term, along with the written assurance of each staff person trained acknowledging that their certification to train expired in one year post training.

64) The material representations that DFY and Margaret Davis made to Plaintiff were intentionally false and were known to be false when made. Neither DFY nor Margaret Davis had any intention of adhering to the terms of their contract, and both had the intention of gaining access to Plaintiff's proprietary materials, property, program, training and expertise through the guise of a valid contract for the purpose of misappropriating such program to adopt as their permanent crisis intervention/use of force program thereby causing injury to Plaintiff.

#### **FOURTH CAUSE OF ACTION: CONVERSION**

65) Paragraphs 1 through 64 are incorporated herein by reference as though fully set forth here.

66) Plaintiff granted DFY a one year reproduction right to said training written and audio visual materials. After the contracted for term, all rights title and interest to reverted back to Plaintiff.

67) Plaintiff has demanded the return of said property.

68) DFY has systematically ignored Plaintiff's demand for said property, thereby causing injury to Plaintiff.

**FIFTH CAUSE OF ACTION: TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP**

69) Paragraphs 1 through 68 are incorporated herein by reference as though fully set forth here.

70) Plaintiff is one of a limited number of vendors known to the private child care agencies.

71) Specific agencies expressed preference to our programs but were coerced by defendants from availing themselves of our services.

72) Other agencies that had not contacted Plaintiff specifically that may have availed themselves of Plaintiff's services were coerced by the defendants to refrain from availing themselves of Plaintiff's services.

73) Defendant intended to preclude Plaintiff and other vendors from the marketplace to insure that the State's program had exclusive access to the market.

74) Defendants unlawful conduct successfully precluded Plaintiff from competing in the marketplace causing economic damage to Plaintiff.

**CAUSES OF ACTIONS AGAINST DEFENDANTS HCC, DENNIS RICHARDSON AND DOUGLAS BIDLEMAN IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES**

**SIXTH CAUSE OF ACTION: BREACH OF CONTRACT**

75) Paragraphs 1 through 74 are incorporated herein by reference as though fully set forth herein.

76) On or about October, 2001 Plaintiff entered into a contract with HCC stating that “upon the scheduling and delivery of training and training materials, the contractual terms included herein are accepted unless otherwise agreed to in writing.”

77) The contract further provided that “the Agency and/or employee of the Agency receiving Handle With Care’s program and training acknowledges that the Program and Training contain confidential information and trade secrets developed and owned by Handle With Care and agrees to treat such information as confidential.”

78) On or about November 8, 2001, Bruce Chapman personally provided HWC training and training materials to HCC, and HCC paid Plaintiff for its services.

79) On or about August, 2002, Plaintiff discovered that HCC and Douglas Bidleman, an employee of HCC and TCI trainer, appeared in TCI’s training manual and video illustrating proprietary HWC information covered under the confidentiality clause the contract.

80) HCC and Douglas Bidleman thereby breached the terms of their contract causing injury to Plaintiff in an amount not yet ascertainable.

**CAUSES OF ACTIONS AGAINST ALL DEFENDANTS IN THEIR OFFICIAL  
AND INDIVIDUAL CAPACITIES**

**SEVENTH CAUSE OF ACTION: MONOPOLIES, RESTRICTION OF TRADE  
AND UNFAIR COMPETITION**

81) Paragraphs 1 through 80 are incorporated herein by reference as though fully set forth herein.

82) OCFS is the State Agency in charge of all state-owned youth facilities in New York State. OCFS is also in charge of licensing all child care providers.

83) Pursuant to New York State regulations, private child care providers and residential treatment centers are required to submit for OCFS's approval a use of force policy at the time of license application and every two years thereafter.

84) OCFS's regulation states that "*an authorized agency shall not use any method of restraint unless it has submitted its restraint policy to the department and such policy has been approved in writing by the department*" NYRR 441.17 (c).

85) Child care providers and residential treatment centers frequently employ vendors like HWC to provide a use of force program and train staff.

86) On information and belief, OCFS has violated its own regulations by systematically refusing to allow agencies to submit use of force policies.

87) On information and belief, New York State owns its own use of force program in conjunction with Cornell University and the State of New York College of Human Ecology. This program is called TCI and is owned by the State of New York and administered and controlled by Cornell University.

88) On information and belief, OCFS has created an environment whereby private child care providers can only use TCI as their use of force

training provider or risk their license and ability to do business within the State of New York.

89) OCFS has told private child care providers under color of state law that the only approved restraint training vendor is TCI, and despite regulations to the contrary, private agencies can not contract with Plaintiff or any other restraint training vendor for services or risk their license and ability to do business within the State of New York.

90) On information and belief, OCFS in conjunction with Cornell University, New York State College of Human Ecology and TCI have illegally coerced a monopoly control over crisis intervention, behavior management and restraint training services to private child care providers located within the State of New York.

91) On information and belief, this monopoly control is further evidenced by the fact that TCI is currently charging New York State 4-10 times the rate that it charges for identical services provided to out-of-state customers.

92) On information and belief, federal monies through grants and matching funds have been and are being used to fund payment for TCI's training services to New York State child care providers. These funds are being procured at 4-10 times the rate that TCI charges to its out of state customers.

93) On information and belief, this monopoly affects interstate commerce as many of the child care providers licensed in New York have multiple interstate locations (e.g. Catholic Charities) and are often headquartered outside New York State. Private child care providers have limited training dollars

to spend on crisis intervention/use of force restraint training. If New York is prohibiting the use of programs other than the State owned TCI program, it becomes cost and administratively prohibitive for these national child care providers to contract for multiple training crisis intervention vendors thereby affecting Plaintiff's ability to fairly compete for national and international training contracts thereby causing injury to Plaintiff.

**EIGHTH CAUSE OF ACTION: CONSPIRACY TO MONOPOLIZE AND RESTRICT TRADE**

94) Paragraphs 1 through 93 are incorporated herein by reference as though fully set forth herein

95) On information and belief, Cornell University, New York State University College of Human Ecology, Family Life Development Center, Residential Child Care Project, TCI, OCFS, HCC, Dennis Richardson individually and as CEO and President, Douglas Bidleman individually and as an employee of HCC, Martha Holden individually, Michael Nunno individually, OCFS, Jeffrey Lehman as President of Cornell University and individually, and Hunter Rowlings as former President of Cornell University and individually, John Johnson as OCFS Commissioner and individually, all knew, participated in, acquiesced, benefited from or accepted the plan by which under color of state law TCI was allowed to obtain an exclusive monopoly over the right to train private child care providers situated in New York State.



96) On information and belief, all of the foregoing entities and persons mentioned also knew or should have known that substantial amounts of federal monies were being procured and used to perpetuate this illegal scheme.

97) On information and belief, all the foregoing entities and persons mentioned also knew or should have known that the funds being procured to pay for training services provided were 4-10 times the rate out of state customers were being charged.

98) On information and belief, this conspiracy to monopolize affects Plaintiff's ability to fairly compete for national and international training contracts thereby causing injury.

**NINTH CAUSE OF ACTION: MISAPPROPRIATION  
TORT FOR BUSINESS SCHEME AND TORT OF TRADE SECRET  
SERVICE MARK DILUTION AND UNFAIR COMPETITION AT COMMON LAW**

99) Paragraphs 1 through 98 are fully incorporated herein by reference as though fully set forth herein.

100) Plaintiff created an intangible asset in the form of a crisis intervention training program including but not limited to theoretical models, teaching methodologies, spotting system, verbal counts, physical techniques, expertise, presentation methods and exercises, demonstrations, performances, workshops and seminars (collectively "HWC Training Program")

101) The HWC Training Program was developed with much effort and is of great value.

102) Plaintiff has taken appropriate steps to maintain the confidentiality and secrecy of the HWC Training Program described, and accordingly, the HWC Training Program could not be properly obtained from other sources.

103) Defendants Doug Bidleman, OCFS and HCC contracted with Plaintiff under circumstances acknowledging that the parties contemplated the maintenance of secrecy.

104) Upon information and belief, defendants took Plaintiff's assets and made commercial use of them despite agreements to the contrary.

105) Upon information and belief, defendants improperly disclosed and misappropriated Plaintiff's proprietary information.

106) Upon information and belief, TCI improperly gained access to Plaintiff's program and knew or had reason to know that the information being disclosed belonged to Plaintiff. Defendants disregarded ownership thereby taking Plaintiff's assets and portraying them as their own.

107) Plaintiff demanded the return of said assets and was refused, causing injury to Plaintiff.

108) Defendants by intentionally passing off of HWC's assets as their own are diluting HWC's established reputation as a quality service provider. Defendants are also diluting the recognition and goodwill HWC enjoys because defendants have taken assets associated with and connected to HWC's program and incorporated into their own without license or mention of source. This is confusing to the industry and has done enormous damage to Plaintiff.

109) Defendant, OCFS is currently using the term “Primary Restraint Technique” and have included an illustration of the Primary Restraint Technique (“PRT”) in its manual. The term Primary Restraint Technique (“PRT”) is a common law trademark as well as a registered service mark owned by Plaintiff. The illustration of the Primary Restraint Technique as it appears in OCFS’s manual is also a common law trademark as well as a registered service mark owned by Plaintiff.

110) OCFS improper use of Plaintiff’s service marks creates the appearance that Plaintiff authorized or endorsed its use or is connected with Plaintiff or Plaintiff’s services causing injury to Plaintiff.

#### **TENTH CAUSE OF ACTION: UNJUST ENRICHMENT**

111) Paragraphs 1 through 110 are fully incorporated herein by reference as though fully set forth herein.

112) Defendants have been unjustly enriched by the misappropriation and unlawful use of Plaintiff’s materials and HWC Training Program (as previously defined).

113) Defendants must disgorge the unjust gains, and restore Plaintiff’s status quo.

WHEREFORE, Plaintiffs requests for an order of judgment against defendants as follows:

1. For damages according to proof at trial;
2. For three times the amount of actual damages suffered by plaintiffs as a result of defendant's violation of all applicable federal statutes;
3. For preliminary and permanent injunctive relief prohibiting defendants from continuing the violations of law set forth herein and from taking any punitive action against plaintiffs in retaliation for the filing of this suit.
4. For costs of this suit and attorneys' fees;
5. For such other and further relief as this Court deems just and proper.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Hilary Adler, Of Counsel  
Handle With Care Behavior Management  
System, Inc.  
184 McKinstry Road, Gardiner, NY 12525  
845-255-4031/Fax: 845-256-0094

DEMAND FOR JURY TRIAL.

Plaintiff demands trial by jury of all issues.

\_\_\_\_\_  
Hilary Adler, Of Counsel  
Handle With Care Behavior Management  
System, Inc.  
184 McKinstry Road, Gardiner, NY 12525  
845-255-4031/Fax: 845-256-0094

**COMMENTS FROM READERS ON ARTICLES REGARDING SAFETY  
CONDITIONS AT OCFS JUVENILE DETENTION CENTERS AND GROUP  
HOMES**

**HEADLINE: DOJ REPORT**

<http://www.leaderherald.com/page/content.detail/id/515304.html>

**justice**

**09-02-09 8:12 PM** I was a former staff at cass part of the problem at cass was lack of training I was never sent back to Parker to finish my training because Doug Cannister and Pace thought it was a waste of time quote! My radio didn't work so I could call for help, the inter-com got unplugged, Central office had prior knowledge of cass being out of control letters were sent to kevin mahr and others prior to my kidnapping, what about the big wigs that came in and had us put labels on all drawers etc. so the residents knew where things were kept. What about the director never having the locks changed they were sitting in the maintance for months, what about documentation that was changed so the reports always came out perfect central office knew about this to all they did was give the yda that did it two weeks paid leave for being the directors goldboy!  
[»Report Abuse](#)

**lakeres**

**09-02-09 8:25 AM** The state government needs someone to blame, other than themselves, for the mess it's in. So, they blame the staff, knowing that most won't speak up for fear of reprisal. In this economy, few can take a chance of losing their job no matter how unsafe it may be. I hope that some former employees will begin to tell their stories of lack of training, lack of support, forced overtime due to intentional understaffing and their own fear. And, where's the union speaking on the behalf of the employees?  
[»Report Abuse](#)

**justice**

**09-01-09 8:13 PM** All you yda's need to set the record straight go to the newspapers and blow the top off of this thing. It certainly does look like you're being set up! It seems nobody cares that staff are getting hurt everyday in these facilities, murdered, beaten, raped & kidnapped!  
[»Report Abuse](#)

**lakeres**

**09-01-09 11:47 AM** Sadly, this problem has been with us many years; it spans all political parties. Seems no one party can find workable solutions  
[»Report Abuse](#)

**ignoredissue**

**08-31-09 11:44 PM** Just stop with all the he said she said hear say about Tryon and all other

## justice

[»Report Abuse](#) facilities. If it's not truth and factual there is no room for it. I have worked this job for a long time and this is the worse it's been and I honestly believe it is intentional and we have been being set up for complete failure for a long time to meet the agenda of closing facilities. The staff and mid level management really have no control over program schedule or activities for residents. Pico Train(my guess for attentionyet) Carrion is very responsible for the creation of this beast in every facility she oversees.

## Zaltan

**08-30-09 1:22 PM** By the way, for everyones information, resident Dodge assaulted 2 more staff last night. But remember, these are only kids, and it's o.k. for them to assault people. Give me a break...  
[»Report Abuse](#)

## TiredOfTax

**08-30-09 8:31 AM** The key word in the above article is "delinquents" employees should, no must be able to do what is needed to keep themselves and others safe from these violent individuals. We should not handcuff the people in charge of the inmates or prosecute them for doing their jobs. Lets remember who they are and why they are there to begin with. NOBODY can control them, no one!  
[»Report Abuse](#)

<http://www.leaderherald.com/page/content.detail/id/515175.html>

## Czerka

**08-29-09 10:31 AM** The Commissioner "welcomes the DOJ report" findings stating that she "inherited" these problems from the prior administration. To keep residents and staff safe there will always be a need to restrain this type clientele in some instances. To effectively run program staff must have control. Carrion will not last past one term, and for the sake of pandering to those downstate who she depends on to enrich her career after she leaves OCFS she is running OCFS into the ground. Residents cannot be rehabilitated in an atmosphere where other residents are allowed to abuse the staff working to help them. Example, several residents at Industry who a few months ago came up with the plan to urinate and have bowl movements in their hands and rub it in the faces of staff because they believe the staff cannot do anything about it.  
[»Report Abuse](#)

## Zaltan

**08-29-09 9:46 AM** I have many friends in all lines of law enforcement and they all say the same thing, "If I had 19 years on the job and I was told that I had to do my last year before retirement at Tryon to retire, I would walk away without my pension." "I don't see how you guys do." All the people out there with all these opinions should work 1 40 hour week in the staffs shoes before you are quick to blame the staff. I will bet 1 years salary that there are not very many capable of doing that. Remember, the outsiders only see in the media, what the agency wants you to see.  
[»Report Abuse](#)

## justice

## Czerka

**08-30-09 6:58 PM** I have not exaggerated a thing everything is true, OCFS csea pef are all failures!  
[»Report Abuse](#)

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[»Report Abuse](#)

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[»Report Abuse](#)

## Zaltan

**08-29-09 9:39 AM** First of all what would you do if I punched you in the face several times, then spit not only in your face several times but in your mouth? You don't know until it happens to you. Remember, some of these residents come into the facility with the HIV virus, TB, Aids and many other diseases and because of confidentiality the staff are not provided that information. How many times does anyone have to get spit in their mouth before they go into survival mode? Let me spit in any of your mouths and see what you do. I believe it's everyone's constitutional right to defend themselves. I don't think the government has taken that right from us yet....  
[»Report Abuse](#)

## ignoredissue

**08-29-09 8:58 AM** again you just refuse to except the truth and accuse another with actual real exposure to this environment as stating lies. Just to be clear there is no fabrication in Justice's post or mine. I have seen a staff hit in the head by a resident with a pipe sliced wide open and blood all over the place he never came back, I have seen a staff after being punched around 15 times and kicked in the face with blood just pouring out his nose and mouth, I was jumped by 4 residents at once, a staff was hit over the head with a board by a resident and died shortly after from stroke, a staff was just murdered near buffalo by two residents throwing a blanket over her head from behind and beating her to death with a object, female kitchen staff was kidnapped at knife point held hostage for hours and raped, a staff was stabbed in the neck by a resident with a pen. The list goes on and on and it would be a blessing if they were exaggeration and fabrication but they are not.  
[»Report Abuse](#)

## ignoredissue

**08-28-09 10:45 AM** [»Report Abuse](#) This goes on for hours with staff, administrators, psychologist attempting to deescalate the resident, and of course nothing works calm the situation because it is usually being done just for fun and the entertainment of it until that last resort comes and a restraint is performed. I know no one believes it but staff are not quick to restrain, they are afraid to perform restraints because they are followed up with child abuse allegations and investigations. The residents will do all that is stated above and there is zero accountability or consequences for it, so the cancer spreads to more residents doing it and doing it more often. The staff are always wrong no matter what they do, they are always blamed for the crisis starting and the way it was dealt with. The residents just continue on in regular program without having to take ownership for their behavior or any type of consequence for assaulting staff. This is just the very tip top of the iceberg and there is no way for you to und

## CaringResident

**08-26-09 12:05 PM** [»Report Abuse](#) Let me just start by saying, I have parent that works at Tryon- and I worry about her health and well being EVERYDAY that she is there. These kids may have grown up with sad backgrounds, come from broken homes, or been abused themselves... But that does NOT give them the right to abuse others. Especially those that get paid to "babysit" these kids. These employees make less a year than school teachers. Look what they have to deal with. Being abused, beaten, mental and physical abuse. If school teachers had to deal with this...there would be NO more public education. There are many many other children that come from broken and abusive homes and they aren't out there stabbing, killing, breaking and entering or assaulting others, JUST FOR FUN. I seriously suggest the ones making comments about how the employees gloat over their money should have to work a day in these honorable peoples shoes. All these kids care about is hurting others- and getting enjoyment out of it.

## Ashley

**08-25-09 10:54 PM** [»Report Abuse](#) By the way, I now of a staff member that has been there more than 15 years. He gets a false charge of abuse against him. It is unfounded, the kid even admits making it up, yet is will stay on this staff members record for 10 years. Where is the justice in that????

## hailey

**08-25-09 8:35 PM** [»Report Abuse](#) The report states that "the number and severity of injuries from restraints is made worse by poorly executed or intentionally harmful restraints". Let me just that in my 14 years of seasonal employment, I have seen several residents intentionally hurt themselves during a restraint so they could file charges on staff. These "residents" are constantly setting the staff up. I watched a resident recently who was restrained during a fight. This resident rubbed his face back and forth on the floor to create rub marks and the staff in question was brought up on charges. I think some people need to wake up and realize what is really happening in these facilities. I think Gladys Carrion has an agenda which sadly, is wreaking havoc in our facilities. Let me also mention that these facilities are not equipped to handle the large number of mental health cases they are being bombarded with.

## beccamay70



## Czerka

**08-25-09 7:52 PM** Here we go again....another politician has read a report about Tryon and wants to make sure the "children" are not abused. I have news for those of you who have never been inside the locked gates of Tryon, they are not children by the time they arrive at Tryon, many of them are career criminals, and the only people being abused are the staff that deal with these "throw-away" individuals that NON-tax paying adults can't parent. I have worked in this environment (seasonally) for 4 years and the degree to which these residents have declined is horrifying. Staff have no recourse, are left open to serious injury and deal with ridiculous policy on a daily basis. It is ludicrous! Until some common sense, non-liberal policy is passed, the "tail will continue to wag the dog" and people will continue to get hurt. And if all else fails.. "Mr. John Q. Public" can take comfort in knowing these "children" have a lawyer on call 24/7 and tax payers

[»Report Abuse](#)

## InnocentParty

**08-25-09 3:23 PM** Quote from Attentionyet: "Stop blaming children....it makes me sick."

[»Report Abuse](#)

Really? It makes you sick? Tell me, how sick will you be when one of these "children" murders, rapes, robs, mames one of YOUR family members?

Another quote: "You need to realize the level of trauma these youth have been exposed..."

Good, I know some kids who were exposed to quite a bit of trauma. How about I bring them by your house and let them urinate all over your lawn, hurt your cat, steal from you and whatever else they feel like doing? After all, they are traumatized children...why not, eh?

## ignoredissue

**08-25-09 2:23 PM** Please do not say that the staff received training. 3 of those 5 weeks we had zero training, nothing scheduled or no trainers. 90% of the training we did do was just our regular required annual refresher training. Nothing new and improved to help the staff work with and deal with the type of residents we are sent. This was just another way to make it look like the staff received all kinds of "new training". This is a joke, we are not working in a public school or day care here. These residents only care about gang related status, violence and creating chaos. The more people they physically hurt the more they enjoy it.

[»Report Abuse](#)

## Hangthemhigh49

**08-25-09 12:49 PM** I have been at Tryon on several occasions. These boys and girls are not from this area but NYC. They are there because most of them have committed a crime, are under aged and have no other place to go but back to the streets. My impression back several years ago, "you could not pay me enough to work there". Senator Farley is correct, that the report does not explain is why 1/3 of the work force is on work related compensations. How many staff members have been faced with criminal charges because of false accusations by some of the parents waiting on the side lines? Thank god we have some one willing to work there so that the rest of us on the outside feel safer.

[»Report Abuse](#)

<http://www.leaderherald.com/page/content.detail/id/508131.html>

## Tryon aides involved in boy's death to be fired

### butterfly1

**12-11-08 11:05 AM** [»Report Abuse](#) sonel22- Next time 'they won't let the grievance slips pass'?? Why did this youth have a grievance against these two YDA's?? What was the grievance? Let me guess....."I am upset that I am not allowed to punch YDA's in the face, throw chairs at them and I am also upset that I am restrained from harming people" hmmm, yeah they definitely should have been on top of that grievance, can't believe they missed it. How many years ago were you there? How many staff were assaulted on a daily bases? How many times did the YDA's restrain a child when that child was slamming chairs to your head or spitting blood in your face? These YDA's don't restrain just to protect themselves MOST restraints is due to protecting the life of the 'other' child. THEN for a thank you for saving the other child they are investigated and depending on their position of the food chain there they either keep their job or not. All for doing their job.

### FireKatt

**12-11-08 2:05 PM** [»Report Abuse](#) This is such a shame. These men were only doing thier job the best they could...and protecting their own lives. They are being used as an example. Two good men without a job. This is appalling beyond words.

### ignoredissue

**12-11-08 9:15 AM** [»Report Abuse](#) "The grand jury process indicated there was "no criminal matter" to be considered" - so why has OCFS continued to label and treat these two men as if they are guilty of something?

"When Murphy returned to work from November to December 2007, he was called a "killer" by Tryon residents." - OCFS forgets or doesn't except that they also have a responsibility to it's staff, who(administrator) informed those residents when he returned to work that he was involved in an incident where a youth died and why wasn't he/SHE held accountable for destroying this mans future when he attempted to return to work?

### dogman12

**12-10-08 9:37 PM** [»Report Abuse](#) I live next to Tryon and sad to see a kid lost his life but why was he there ? Maybe he was a out of control kid like most there ? When Tryon didn't have a fence the kids walked off alot and broke into homes , stole vehicles ,even tied up neighbors and shot the house up and stole the car ! I remember when Mike Tyson was there - we all know that man !! The girls are worse I here - Like I said sad a young person lost his life , I just hope that these kids change for the better not worse like Tyson !!If these guys now at thier age have to find a job it will be tough . Try to control a out of control kid you will then know what they were and still are going through !

### beenthere2

**12-10-08 7:43 PM** sonel22: Apparently you haven't been reading the paper and/or can't comprehend. These guys were found innocent of any wrong doing. Not that

## butterfly1

»[Report Abuse](#) the state did their best to make these two guys the scapegoat to cover their own butts. Bottom line the state did not inform staff of the residents medical condition and although it was mandated, they did not have an AED on site. Instead of making ridiculous statements and going after two innocent people why don't you address those really responsible for this death. An AED could have possibly saved the residents life but there was none also, had the resident not assaulted a staff he would not have been restrained and the whole incident would have never happened.

No matter what business you are in, there will always be bad employees...you are being totally unfair to the YDA's who genuinely care about the kids they supervise and there are a lot of them!!

## WatchDog

**12-10-08 3:02 PM** There are alot of excellent YDA's at Tryon including these two who are going to pay for the agencies failure to communicate the youths medical information and have the proper life saving equipment on the facility (AED).  
»[Report Abuse](#)

<http://www.leaderherald.com/page/content.detail/id/507510.html>

## RESIDENT INJURIES HIGHEST AT TRYON

## butterfly1

**11-20-08 6:54 AM** Needkindness - I personally can tell you I have NEVER disrespected any youth, but yet have been assaulted approximately 4 times within this past year. A stern look of disapproval did nothing for the 'child' as they punched me in the face. If by disrespecting you mean we can not tell them NO then by your standards I did disprect this 'child'. If by disrespecting you mean stopping a fight in progress and being attacked by another youth for stopping it then yes, I also disrespected that youth. We are not animals injuring these 'children' everyday. We are hard working people who have children of our own. We struggle everyday to stop the unhealthy behaviours of these youth and are critized in the papers for doing it.  
»[Report Abuse](#)

## Concerned4Kids

**11-18-08 9:51 AM** Gladys Carrion has created this environment by hiring at least 10 new attorney's (Ombudsman's) and opened up a direct line to complain whenever a resident feels like it. The Ombudsman's office then sends an email of concern to the facility administration which forces them to move away from the custody and security mind set that Glad's does not want. Ultimately the residents have figured out that if they do not like a policy or a particular staff, the only need to call the Ombudsman's Office and they won the game. What Gladys stripped away was the underlining authority of some very professional, dedicated staff. Increased 'abuse' numbers are exactly what Gladys wants to prove her case so that she can justify closures to her home town buddy David Paterson. In 25 years I have never seen a Commissioner who has done more to abuse the children were are supposed to be teaching and helping then Gladys's. Also look at the high level appointments she makes, a clear racial  
»[Report Abuse](#)

**butterfly1**

theme.

**butterfly1**

**11-17-08 8:56 AM** [»Report Abuse](#) Discobulous - This THING as you call it affects everyone. From the YDA who invested 10 - 20 years working with children to the communities who will have to fear for their lives and the lives of their children when these "children" are placed back into society. These SOB's are hardworking people who are trying to defend themselves from the lies and misleading information given by the State. I'm sure if you went to work everyday and were physically and verbally assaulted only to have the blame placed on you as an employee you would have a few SOB's of your own. You obviously are ignorant as to what these facilities are like right now under Carrion. Why don't you get punched in the face, spat on and have a chair hurled at your head, THEN come on here and tell us about SOB stories.

**kristina**

**11-16-08 9:53 PM** [»Report Abuse](#) Come on people Lets remember what kind of "kids" they are. I would like to see some of these people DEAL with this kids for one week.

**cantfixstupid**

**11-16-08 7:23 PM** [»Report Abuse](#) All that these clinicians are doing is giving thesed kids excuses that they will try to use there whole life whenever they dont get there way or they get into trouble. They load them up on there meds which is supposed to control there anger or what-not and we are not able to deal with the real behavior issue...do you really think that once they go home and get off of aftercare they will continue with the meds. It's just an excuse they can use ohhh im adhd im this im that i shouldnt be held accountable for my actions. We need to be a boot camp/corrections model for things to change

**cantfixstupid**

**11-16-08 7:18 PM** [»Report Abuse](#) Thats right these residents are not being held accountable for anything and add on top of that the Psychs we have now that cater to and baby the residents and just give them excuses because they are "traumatized kids" well what about the victims of there crimes you dont think that they are traumatized. Maybe the victims of there crimes would like to see these kids getting pizza parties and cookies and ice cream or extra phone calls just because he decided to "turn it up" because he knows then he will get whatever he wants. Also do these psychs or home office or the Ombudsman forget that maybe some of the staff are traumatized as well. You dont know what staff went through as a child

**samiam**

**11-16-08 6:54 PM** [»Report Abuse](#) The "Sanctuary" model is ineffective for this reason only: It creates a confrontation between youth and staff. The model encourages staff to work with each resident as an individual, which is not bad until the staff have to impose a consequence to a negative behavior. The rules are to be bent and made flexible to adjust to each residents emotional response. However this only causes a confrontation between staff and resident, because the rules are no longer consistent and/or applicable to all. How do you provide a structured environment and adhere to a formatted schedule when the resident decipher

**butterfly1**

the program? Multiply this by 15 to 20 residents.

**samiam**

**11-16-08 6:42 PM** [»Report Abuse](#) Immediately following a restraint, you are supposed to allow a time to de-escalate the emotions of the resident and then successfully counsel the youth. I have witnessed administrators - Strauser, Hoeg and Kelso - speak to the child while they are emotionally charged and take an abuse charge. Eventhough the resident is only angry at staff for enforcing a programmatic procedure, they have been given a tool to get even with the staff. It has worked in the past, as a way for a child to move a certain staff person off of their unit. Who is in charge here? Home office, the ombudsman, and administration is encouraging an US vs THEM philosophy.

**samiam**

**11-16-08 6:32 PM** [»Report Abuse](#) Are they KIDDING? OCFS is making it sound like Tryon staff are nothing but Child Abusers!! The residents are more volatile and aggressive than in the past. Staff implement the physical restraint the way they have been trained, for the safety and security of the facility. However the high number of cases of abuse come from the Ombudsman and administrators encouraging the aggressive resident to claim it, despite no abuse occuring. I have witnessed this.

**sassie**

**11-16-08 11:51 AM** [»Report Abuse](#) working at tryon for several years,the paper doesnt tell of the assaults,spitting on urine thrown on verbal abuse etc.,that goes on at tryon,maybe mr.anich should put on a uniform and work the floor and see the real deal

**justplainsick**

**11-16-08 10:13 AM** [»Report Abuse](#) I agree, what I do not understand is when DOJ comes in then why are you following what ADM says and keep the kids away from them. Not letting the DOJ see what is really going on is not helping. If in fact, Adm is really not doing their jobs why make them look like they are. Let DOJ see the real children in action, don't hide them make sure that they are out in very plane view. I also realize that this report is null and void. If you really want to know information you need to have it current and accurate. You need to take only the info that deals directly with WC and leave the rest of the baggage home. It is non-productive. Plus statistics are only as good as the data collected. There is a margin of percentage loss for incorrect numbers, any idiot knows that.

**cantfixstupid**

**11-16-08 9:48 AM** [»Report Abuse](#) Instead of letting us actually do our job and deal with behaviors we have admin, home office, the ombudsman all telling these "children" the exact opposite of what staff are telling them. If staff continue to do the job like they know it has to be done we are reprimanded by admin or called into the child abuse hotline. All for doing a job that 95 percent of the people telling us how to do our job would'nt be able to handle for an hour on there own without one of us "abusers" to bail them out and save them

**cantfixstupid**

## butterfly1

**11-16-08 9:41 AM** [»Report Abuse](#) Sooo the Sanctuary model is working well huh...We have not even had the training for Sanctuary we were told friday that they training we went threw in march and the whole 3 hours we had this time was an overview. How do they expect us to embrace a new model without proper training. As far as we have seen sanctuary is no restraints and pretty much give your keys to the kids cause they run the place

## justplainsick

**11-16-08 9:24 AM** [»Report Abuse](#) Absolutely right! If a resident says that they were abused, it is reported into the State Central Registry and an investigation is started. If it is found to be true, I believe that the staff are terminated. If it is not true, and the finding is unfounded, it stays with the employee for 10 years. Then it is removed. It is sad that this can follow an employee over to any other job they may go and find. Ex.: in todays world everything is checked on so say a female YDA left with an unfounded against her and say went to work at Lexington. The background check would come back positive if they check through the Registry. Even though it is unfounded she would show what is called a "Positive Hit". Real fair isn't it.

## DupingTaxpayers

**11-16-08 1:34 AM** [»Report Abuse](#) "Borges said a new approach to working with residents - the "sanctuary" model - is a more therapeutic approach and is working well." Yeah, it's working so well the number of residents physically and verbally abusing the staff at several facilities is higher than at any other time in the history of the agency.

## State creates task force to transform juvenile system

<http://www.leaderherald.com/page/content.detail/id/505584.html>

## epup

**11-06-08 9:44 PM** [»Report Abuse](#) I guess I don't understand why Ms.Carrion feels because they are "children" they are not capable of committing a crime. I wish all the people hurt by these children would speak out. The guns they carry still kill, it doesn't take the adult hand to shoot. The sexual attacks are as real as if any grown up did it. They are not locked up because someone has a vendetta against these youths, but still we want to keep them in the same neighborhoods, with the same families that in one way or another supported the need for violence. OCFS should be ashamed of themselves for supporting coverups, and supporting the side of violence by not supporting the state employees doing their jobs. Justice I hope you get justice but we all know the law isn't always just. Where are all the bloggers?

## guphieup

**10-26-08 5:24 PM** [»Report Abuse](#) I cannot stress how important it is for everyone to report any abuse from residents when it happens. It is not a given that when we decide to do these jobs we will expect to be hurt. We deserve to have a safe work place without fear of incidents that might end our careers. Even the verbal abuse is

**epup**

reportable and should be done. Ms. Carrion has taken away the right to a safe work area by giving the residents so much power. Please do not just ignore the fact you are being verbally and physically abused, let your supervisors know and your union leaders.

**birdie**

**10-26-08 6:18 AM** [»Report Abuse](#) The commissioner wants these youth to be treated in community based programs. Ok, who is going to run them, and at what pay? Where does the money come from to operate these plans? What will the direct care staff do when these youth curse them out, make disrespectful remarks towards them and their family members, threaten them, spit on them, and simply become non-compliant to any type of authority? You may as well just send them back to their homes, as this is exactly what they have done at home. Ask their parents and family members. How much longer will grandma be able to deal with them? If you are trying to make OCFS facilities fail, I can only imagine what these community based programs will be like? Is there any agenda as to what community based program will pretend to be? This is simply an unrealistic plan by this administration.

**RobertG**

**10-24-08 9:02 AM** [»Report Abuse](#) Thanks to Carrion and her cronies many of the facilities @ OCFS continue with more of the same. The kids continue to be in charge and the ombudsmen continue to defend the youth and question the staff. Discipline is not a bad word. I continue to wonder if this is not a grand plan of Carrion to get residential facilities out of control so she can validate closing them all down. Could Carrion and her advisors really be that far removed from how these can be really helped?

**guphiempup**

**10-17-08 12:08 PM** [»Report Abuse](#) I do not work at Tryon but support the need to get sanity back in our facilities. Yesterday I watched a resident, in the face of a YDA challenging him to "turn it up, what do you think you are going to do? The ombudsman only believes us, so you can't do anything" I definitely would not take that from my children why then am I asked to accept that behavior from a person who needs structure and guidelines. Somehow the consequences absolutely do not meet the choices. We are teaching these children nothing except it is ok to treat people badly, rob, harass, abuse and someone will be there to make it all right for you after all you are only a "child". I think it is a slap in the face to the Tryon staff to "retrain" them, maybe some constructive changes and ideas but these are people who have been doing an excellent job for many years. Just another way of saying you are worthless from our commissioner and her staff.

**birdie**

**10-15-08 7:45 AM** [»Report Abuse](#) It looks like Tryon will begin its training next week. These are seasoned staff and should not need the training. They know what to do and how to do it. Will this administration provide the same training to other staff at other facilities, or is this just a way for them to say "Look what we did, we trained their staff, now if something happens it's on them" Sounds pretty fishy to me?

## HelpUsGovernor

**10-03-08 7:58 PM** I think in between tragedies the blogging calms down a bit. Unfortunately, I'm sure some new horror will occur to residents and/or staff at DJJOY facilities compliments of the inept Gladys Carrion and the blogs will heat up again. I'm thinking of starting a pool on how long the new facility director at Tryon will last before he fumbles the ball and is "shuffled off" to yet another new assignment.  
[»Report Abuse](#)

## RobertG

**10-03-08 12:25 PM** Sorry about that the link does not work on this blog. Go to dailynews\*\*\*\* and look up the story: Teen in Shannon Braithwaite Brooklyn stabbing horror called troubled There is a comment on OCFS under that in the blog.  
[»Report Abuse](#)

## RobertG

**10-03-08 12:23 PM** Hey - check this out  
[»Report Abuse](#)

\*\*\*\*\*nydailynews\*\*\*\*/news/ny\_crime/2008/10/02/2008-10-02\_teen\_in\_shannon\_braithwaite\_brooklyn\_sta-2.html#community

You guys should make some noise over @ the Daily News. This is such a tragic story. Someone has made a post about OCFS.

## Gerry1

**10-03-08 6:08 AM** Sawgunner-- the article that you're talking about is only the tip of the iceberg. Upstate New York communities are getting more danderous as well. There was a kid in an upstate facility who viciously assaulted another youth seriously smashing the youth's nose. Efforts were made to keep the youth at the facility for an extended period of time. The facility was told by the powers that be that the kid needed to be released to the community after one month. That same kid stole a car shortly thereafter and was then told by our home office that he couldn't be revoked!!! The same kid caused a problem within his home school with the police being called and still no revocation. Is the community safer? People are catching on that communities are not as safe as they used to be under the new commissioner's watch. Unfortunately NYC streets aren't as safe as they used to be. Violent crime is up and the answer is to treat the kid within his/her home environment with programs such as MST  
[»Report Abuse](#)

## sawgunner

**10-02-08 7:32 PM** NY Dailey News article.... "Cousin, 15, arrested in knifing murder of Brooklyn teen Shannon Braithwaite".... Check it out on the NY Dailey news website. Answer me this gladys - Where would you send this teenage murderer? A community program???  
[»Report Abuse](#)

## WatchDog

**09-26-08 11:26 AM** The following is from page 10 of the PEF September 2008 newsletter, The Communicator.  
[»Report Abuse](#)

PEF President Ken Brynien met with Carrion in August to again discuss increased violence and child abuse allegations.



**epup**

"Our concerns seem to be falling on deaf ears," Brynien said. "This commissioner is more focused on moving kids to community programs that already have failed too many kids. The immediate focus should be on creating a safe environment for the employees and youths."

**RobertG**

**09-15-08 7:46 PM**

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teebuzz = yeah gerry was a day off - his mistake. I just want to say the commissioner & cronies are the ones that sensationalize things. I am sorry you do not see it. Perhaps you have to be an insider to see it. You have already stated you do not work for OCFS. For all of us that work in OCFS the propaganda put out by Ms. Carrion's office is very obvious. This woman is a real piece of work. I am completely put out that she considers the children of OCFS her children and she thinks the staff are useless. She is a horrible person who actually must think she is a worthy person who does good work, but is quite the opposite. Teebuzz - I don't think you will ever be able to comprehend what the kids & staff @ residential facilities are going through under the lame leadership of Ms. Carrion!

**carrionmustgo**

**09-13-08 9:00 PM**

[»Report Abuse](#)

FYI ---In reading a friend's recent issue of the PEF Communicator it noted that PEF has produced a Know Your Rights Handbook for members working in OCFS facilities who are assaulted or accused of child abuse. It should now be available at every OCFS facility. Ask someone in PEF for a copy. A disheartening but not surprising statement was made in the article by PEF President Ken Brynien. He met with Carrion in August to address increase in violence against employees and child abuse allegations " Our concerns appear to be falling on deaf ears. This commissioner is more focused on moving kids to community programs that have already failed too many kids" It's hard to feel appreciated by the commissioner when it appears that our safety is not a high priority.

**fedupwithit**

**09-13-08 9:18 AM**

[»Report Abuse](#)

I agree with Robert G. The gov never should have allowed the Commiss. to head this taskforce...how biased!!! An independent firm should do the work-since OCFS staff are incompetent??? Let's face it, just a waste of more tax payers dollars.

**Family wants second autopsy – Charles Lofty – Tryon YDA**

<http://www.leaderherald.com/page/content.detail/id/505392.html>

**ChildMadness**

**06-15-09 6:56 PM**

[»Report Abuse](#)

Who is going to take the blame for this?

18-year-old Anthony Allen and 17-year-old Robert Thousand have been charged with murder, robbery and burglary. They are accused of killing 24-year-old Renee Greco who was working at the Wyndham Lawn for Children in

## ChildMadness

Lockport. New York State Office of Children and Family Services which licenses Avenue House and other youth facilities is launching an investigation of Monday night's tragedy and has suspended its license to operate, effective immediately.

## ChildMadness

**09-09-08 8:06 PM** My facility happens to be one of the ones with a couple of therapists who were hired for their expertise in being able to identify behaviors and to assist the staff with working more effectively with the residents (sanctuary). The therapists are just as bad as the ombudspersons in that they believe everything the residents say, and that the staff is not helping the residents get better. I am tired of being approached by administrative staff with accusations of inappropriate interactions that set the residents off. And who do you think told the administrators who said what? No one asked me anything! In fact, the resident verbally abused me so I left him alone. I didn't have any interaction with the resident except for giving him a directive and his cursing me out. He refused to comply with any directive from any staff for the next 6 hours. However, he would speak with the therapist, who he told that I had verbally abused him. Now it seems that I need a lawyer. Gladys should invite him

[»Report Abuse](#)

## Jr88fanNY

**09-08-08 1:40 PM** teebzz - have you ever worked a job where you know that going into work might mean that you could be going off shift injured and to the hospital instead of going home safe and sound. I am not talking about the risk that we all take driving to and from work instead the violence in the work place. Worst yet have you ever gone into work with a thought going through your mind about never going home to your family again?

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I am not referring to a paper cut as a injury or choking to death on your cup of Joe from Dunkin Donuts or your salami sandwich. Instead I am talking about serious injuries caused by kids who have committed criminal acts serious acts not stealing a candy bar or urinating in the park.

Stop bashing these workers that are doing what you are NOT having to do every day they go to work. They need public support not public ridicule.

## carrionmustgo

**09-04-08 8:22 PM** Carrion is a lawyer. It took her 3 days to respond to Mr. Loftly's death with any sort of acknowledgment. I guess it gave her time for all of her handlers to give her advice on how to respond. Funny that someone who heads up such a large human service agency lacks a timely human response. It's too bad that the only sort of human response and compassion is directed to her "children"

[»Report Abuse](#)

## MAFVI T

**09-04-08 8:18 PM** "Bill thought it was an important time of healing," Steele said. "We're moving forward positively." I just have to say Mr. Gettman I don't think anyone is moving on positively. This family is heartbroken over the loss of their loved one. Anyone who works for OCFS knows the injury to Mr. Loftly's head did in fact bring on his untimely death. All of this is because Former Gov. Spitzer gave Ms, Carrion a job as commissioner of OCFS. Ms. Carrion is unfit for this

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## ChildMadness

position and everyone in OCFS knows this.

## wanderer10

**09-04-08 7:19 PM** Getman and Burrell left so fast, they nearly ran from the church. Disgusting....  
[»Report Abuse](#)

## sawgunner

**09-04-08 6:39 PM** What? Where was Gladys?? The leader of the pack didn't show up? Is that how she showed her "appreciation" for Mr. Loftly? She probably thought her pathetic 8/29/08 "Dear Valued OCFS Employee" letter would suffice instead of her presence at the funeral.  
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## DA: No new charges for Tryon resident

<http://www.leaderherald.com/page/content.detail/id/505204.html>

## sawgunner

**09-10-08 9:02 AM** Gerry1 - I fully agree with the community programs flunking. The MST study showed it and you can also just listen, from one of gladys' children's own mouth, how many community programs they have been placed in....But they didn't show up to which violated the judges order so they go back in front of the judge for the 3rd or 4th time (arrest, placed on probation, violation of probation and placed in community program, violation of community program and placement in facility) for their placement in facility. Now that is a waste of tax dollars. Some of these procedings take up to 4-5 months. If they got placed in a facility at the start, they would almost be done the facility's program and on their way home. Instead they are wasting time and money with community program delinquencies and court cases. Gov. Paterson, do a study on that waste of money. It would be enormous.  
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## sawgunner

**09-07-08 8:16 PM** I don't know justice but at the facility I work at there has been a real increase in staff injuries from combative residents. Some seriuos (ie comp) and some not (ie scrapes etc) regardless, not one YDA or other staff member should at anytime be assaulted or injured by one of Gladys' "children"  
[»Report Abuse](#)

## justice

**09-07-08 7:56 PM** How many injuries has there been state wide since gladys tooks over.  
[»Report Abuse](#)

## shesgot2go

**09-05-08 9:57 PM** Teebzz ~ if you don't think your blogs aren't nasty and sarcastic, then you need to go back and reread some of yours. Just on this page alone is at least

## sawgunner

[»Report Abuse](#) three incidents. We don't proprot to know all the answers, we just know what WORKS and what doesn't and what she is doing isn't. We are not resistant to change, just give us something that works for both children and staff.

## facts07

**09-04-08 10:32 PM** I agree with shesgot2go comments. Our agency has taken a turn in the wrong direction and everyone has felt this. From the residents to home office. I have talked to a lot of YDA's across the state and they have the same feelings. Hey Gladys why don't you wake up and pay attention to the people you are supposed to represent.

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## howmuchmore

**09-03-08 9:00 PM** Now a staff is accused of child abuse and they can't work on the unit with the Resident who is claiming the abuse... And so it goes - round and round shifting staff from one place to another and mandating another staff to cover the units, it becomes a vicious circle. With no end in sight...

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If we had even some of our skills back, we would have less restraints and when we did have to restrain a Resident it wouldn't be after they were out of control.

## ignoredissue

**09-01-08 1:00 PM** When Gonefor said when residents were held accountable for there behavior and they knew there would be some type of consequence for acting out when anyone said "chill" they did because they did not want to lose any privileges. Now today with Carrion's no accountability for one's behavior no matter what the count is they are always going to act out causing chaotic and unsafe environment, another reason to close facilities. So just go ahead and continue to pick apart and analyze what we are saying or you can try to actually understand.

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## junior

**08-30-08 10:46 PM** Hey, I have a great idea!!!! How about Gladys and her staff come to Tryon and fill in Tuesday so that all of Charles friends and co-workers may attend his funeral. NEVER HAPPEN !!!!!. They came to Tryon so that staff could have sanctuary training and had the\*\*\*\*\*scared out of them. My thoughts and best wishes go out to Charles family.He will always be in our hearts.

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## Gerry1

**08-30-08 8:20 AM** Good morning. As most of you will be enjoying the last full weekend of summer before the kids go back to school there are state employees mostly YDAs in OCFS facilities working long hours with mandated overtime due to staff injuries and others others out on stress due to unsafe environments due to the the failed policies of Gladys Carrion. These employees will invariably be facing verbal abuse or worse yet physical assault under fear of protecting themselves or doing what they know is right to maintain a safe environment for the other residents and themselves. The environment she has fostered is one of fear--- fear of doing one's job properly, fear of being called into the child abuse hotline, fear for the safety pf the residents and for themselves. Yes

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## sawgunner

there are children in these facilities who have made mistakes and some appear to sincerely want to change and to learn new ways of coping and handling stress and anger and to get an education but the environment isn't conducive fo

## Gerry1

**08-30-08 8:30 AM** continued for it. One must feel safe before one can relax and focus on learning. In my many years in facilities its sad when a youth confides that he doesn;t feel safe. Some didn't feel safe in their homes, their communities and now the facilities where they've been sent. This wasn't the way it used to be before Carrion. The number of restraints, youth and safe injuries have multiplied under her watch. There needs to be an investigation between the old administration and the current one. The comparisons will be glaring. Never in the history of OCFS has staff morale been lower. Good people go to work with good intentions of helping kids (yes that's why we got into the field) only to be told by our commissioner in the press of what a lousy job we're doing. She'll later threaten our livelihoods by stating that she'll rightsize facilities so she can keep offender in the community closer to their homes in expensive community programs that don't work (MST) She's making the

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## oredissue

**08-29-08 8:53 PM** Watchdog your following comment is perfect, so I reposted it!

[»Report Abuse](#)

"Carrion, Borgess, Burell and Getman I invite you to come put on a uniform and run the floor, please come show me what I have been doing wrong for so long. Please come and establish order and control, follow the entire daily schedule following all the guidelines we are required to. I guarantee all four of you together can not do what one staff does. If I'm wrong come show me without having staff support, without hand picking residents or unit because we get deployed all the time to other units and do not know the residents in that unit at all. Please come and allow you children to treat you the way you allow them to treat us. Please come and tell them No and have abuse accusations made against you and your name on the state child abuse registry. I beg you to come do our job following your policies and procedures without making exceptions for yourselves and really experience what we do everyday. Please come do this for us!

## smithe

**08-29-08 2:24 PM** I hope Ms Carrion sleeps well tonight. We have staff at Tryon working the overnight shift with minimum coverage. Will they be as safe?

[»Report Abuse](#)

## WatchDog

**08-29-08 12:20 PM** "pre-shift briefing" that Burell speaks of is something staff have always done. This isn't something they just invented like she makes it sound as an improvement. It was brought up by labor and negotiated for in the new contract and won to pay staff overtime to conduct per shift briefings. Every time I read comments by Carrion, Borgess, Burell, Getman they are full of baloney and continue to blame the staff. The staff have and continue to do everything wrong. They actually know NOTHING about what staff do and how good they are at it.

[»Report Abuse](#)

## WatchDog

**08-29-08 11:08 AM** I completely agree residents need to be protected from abuse, neglect and maltreatment. This is wrongly enforced in OCFS facilities. The actual circumstances are not be investigated or taken into consideration they just call the hotline and a staffs livelihoods at stake. A staff defending himself/herself from violent assault who in the situation is unable to follow techniques exactly as on paper are called in. Resident is upset and doesn't like a staff because they are firm and hold them accountable for their behavior so they lie making false accusations on the staff and it's called in to the hotline. There is no support for the staff, they are assumed guilty of accusation and treated that way. When it is proven to be a false accusation the staff is still on state registry for 10 years and the resident is not held accountable for the false statement. The staff also need to be protected and they do not see that as important or necessary. We are just hung out to

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## eclaimGville

**08-29-08 11:00 AM** Can you say COVER-UP!!!

[»Report Abuse](#)

## smithe

**08-29-08 10:45 AM** Loftly worked doubles for years without headaches. He gets assaulted from behind, hit in the head no less then chronically complains of headaches, then has a stroke and dies. NOT CONNECTED to the assault??!?!?!?!

[»Report Abuse](#)

## OCFS to scale back residents at Tryon

<http://www.leaderherald.com/page/content.detail/id/505185.html>

## tellthetruth

**08-29-08 10:33 AM** If the residents are out of control, why do the staff need more training? We already now if we are spit on to wipe it off and tell the "child" that this is inappropriate. If staff are threatened, to call for help and leave the area because the "child" is upset. Don't separate an upset "child" from the group, it's deemed "punitive". This is not a problem at just Tryon and Lansing, this is State wide. From the Commissiner on down, this is a group that wants to hear no dissenting opinions and seeks revenge for any criticism. The "professionals" stated years ago the benefits of schools without walls. Now all the walls are going back up to correct that dumnd idea. Everyone gets punished if you make a mistake, that is part of life. It's called growing and learning. The only exception is if you commit a crime and are sentenced by the Court to "Carrions' Club Med", I'm sorry, I forgot ot put esq. .

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## Bronte415

**08-28-08 7:27 PM** God Bless all the men and women who endeavor to do a good job at Tryon--it appears you are working with your hands tied. I'm sorry and I hope no other employee is hurt or dies as a result.

[»Report Abuse](#)

## rocky1

## tellthetruth

**08-28-08 4:09 PM** While reading these posts, I am getting a whole new perspective as to what your jobs with these kids entail. I do not envy any of you and as a matter of fact, I have now placed you on a pedestal. You all must be saints to do this job. First, let me thank you. Second, I agree that something needs to be done. I hate to think that anyone of you would or could be in a position where you might lose your job or lose you life while you are only trying to make it safer for yourselves, your fellow YDA members and the youths who are housed there. Is there anything any of us non employees can do to really help you and especially help to get the message out as to what and who is the real problem here? I will do whatever you ask, as long as it remains just under the law.

[»Report Abuse](#)

## junior

**08-28-08 3:49 PM** Mr Getmen are you that clueless? Tryon had 127 restraints in the month of july and 50 in the first week of august. The numbers of kids at tryon are the lowest in history and the restraints are the highest. Does this sound like things are going well lately to anyone? Please dont try to fool the public Mr Getman as we are not just a bunch of \*\*\*\*\* idiots as some in albany believe.Thanks to the Leader Herald and these blogs, the public will stay informed of the real thruth.

[»Report Abuse](#)

## Tryon getting new leader

<http://www.leaderherald.com/page/content.detail/id/505137.html>

## jameslater1

**12-29-08 4:23 PM** hey for all the staff at tryon this is james slater and i was a resident there 3x and i thought it was out of controll while i was there and i know its not the staffs fault and i dont think i heard what happened to mr loftly but i knew him from elm1 and he was the funniest staff ive ever know and i loved him he was awsome but hwne i got there he told me how it was "YOU PLAY ,YOU STAY" lol and i know that that whole admin building wow it was a mess for 1 theres way to much micromanigment everyone is doing everyone eles jobs and you cant change up program on these kids who barely know how to read letalone understand what it takes and that they have to participate to have a smooth running program as i was saying you cant change up program every week like theyer ginny pigs and

and when i was there the last time in may o8 i saw that the kids thier were more incontroll then the staff

## IluvTryon

**08-26-08 11:07 PM** This is a very sad day. My heart goes out to Mr. Loftly's family, friends and his coworkers. I didn't know Mr. Loftly as long as most staff, but I can say that he always had a smile on his face. He ALWAYS put a smile on his coworker's and youth's faces. He was a pretty special guy. I am an employee at Tryon and I am honored to work there. I am honored because I work with some pretty amazing individuals who give their heart and soul to Tryon and to the youth in Tryon. It is very frustrating to see what is happening at Tryon. It feels as if there is no hope even though we all want a safe, therapeutic environment FOR

[»Report Abuse](#)

## jameslater1

ALL. I have never seen an agency/facility that is so inconsistent on all levels. I have never seen so many non-qualified administrators than I have within this agency. Not one person I know comes to work wanting to hurt any of these youth.

## advocate

**08-26-08 10:37 PM**

[»Report Abuse](#)

my husband worked with Charles and is heartsick. I don't think that Ms. Carrion made this mess alone but it is my sincere hope that the new Director begins to repair the damage and that Ms. Carrion allows it. Obvious changes need to be made. Please Ms. Carrion don't say for one second that Charles passing may not be related to the incident. Just fix it, hold the kids accountable when it's appropriate, hold the staff accountable when it's appropriate but every time a staff puts his hands on a "child" your staff find them guilty of child abuse. We have young children and if this happens then it's a mess at home. YOUR staff are put on "the register" which prevents them from working elsewhere with kids, my husband would be unable to coach or go to school to work on his day off, come on let's really look at situations and not just take the easy way out and blame staff. Lets learn from the tragedy that occurred and ended this evening for CHARles family.

## left2thewolves

**08-26-08 10:14 PM**

[»Report Abuse](#)

In response to JPS, I think all of our family members have the same worries. I have informed my family of what steps to take in the event that I am injured and cannot speak for myself. In reference to the comment about a child who has has died" (mattym) The child died of complications from a heart condition, not because he was in an unsafe environment! Get your facts straight. The staff were cleared of any criminal malice! Let me go on...Do you have any idea what the staff involved in that incident have been through? Do you know what their life have been like since? There lives are ruined!!!! Where do you get off!!!! Now we have lost another dear friend and coworker. Don't judge lest he be judged!

## left2thewolves

**08-26-08 9:56 PM**

[»Report Abuse](#)

So, today in the blotter, a resident was arrested at girls for assaulting yet another staff because she was given a directive which she did not agree with. Once again, residents not getting their way and reacting with violence. Is that staff now out as a result? I must also comment on the amount of staff that simply have just called it quits due to the deplorable conditions in which they have been working. I don't blame them a bit but will miss them. ...and still the mandates continue.

## justplainsick

**08-26-08 9:55 PM**

[»Report Abuse](#)

For me I just pray that my husband who goes to work comes home safe everyday as well as any of the employees at that place.

I will however, keep all those who work at Tryon in my prayers that the good Lord keep you all safe, give you the strength that you need to go to work and do the best you can everyday and keep the community safe.

Amen!



## justplainsick

**08-26-08 9:41 PM** [»Report Abuse](#) New Leader, what was wrong with the old ones? I am married to a gentleman that works at Tryon. Yes, I know how he feels, what he thinks and we have had many serious talks, especially lately amongst all of this absolute garbage. First and foremost we have discussed if anything should seriously happen to him, he would not want any heroics and secondly get a good lawyer. Yes, sad as it is, now a day things have changed. The children are getting more violent, parents hands are tied, kind of damn if you do and dammed if you don't not like when our parents raised us. I have children and I would not tolerate what is going on at that facility. If you read from employees who work there what they are saying is the truth. They are afraid to talk, afraid to do their job for fear of being turned in for child abuse. Yes, that is right. If they restrain a youth wrong and the child says he did something wrong the YDA is turned into the State for child abuse, investigated it can stay for 10 y

## mattym

**08-26-08 7:01 PM** [»Report Abuse](#) Does anyone not find it ridiculous that a child has died and a staff is in critical condition from the unsafe environment @ Tryon. Ms. Carrion needs to get with the program and properly manage these programs. Other than call OCFS staff racists and voice her embarrassment, what has she done for OCFS. OCFS was not a shambles when Ms. Carrion took leadership but she is busy making a mess of things. The majority of OCFS have truly dedicated staff with good programs. Ms. Carrion chooses not to recognize this as she has her own agenda. Instead she has carefully chosen statistics and degrades the programs and their staff. It's a disgrace to DFY/OCFS. What was what former Governor Spitzer thinking when they hired Ms. Carrion; many of us just don't understand. My heart goes out to that family of the youth that died and the staff in critical condition.

## rfactor

**08-26-08 4:53 PM** [»Report Abuse](#) The above article speaks only of the top administrative change at Tryon--- word has it they cleaned house---and retired my ass--Rascoe was escorted off campus by Carrion's cronies---the next 2 administrators were also forced to leave as well by taking other positions within OCFS--with lesser pay-- then with the tragic news of the man in a coma who was hit with a piece of wood by one of the kids--Carrion sends her cronies to the hospital to console the family---console my ass-- they went to break the HIPA laws --to find out what is happening--and to see if they may face a law suit---- I hope the family of the this YDA looks into the legal aspects of OCSF's responsibility of not providing a safe work place--

## sparkles

**08-26-08 4:19 PM** [»Report Abuse](#) As an ex employee of Tryon I also worked with the YDA that is in the Coma Fighting for his own Life. This YDA is a Very Professional and Respected person who always had a SMILE and a GOOD word to everyone he was in contact with including the Residents of Tryon. I hope this wakes up the ADMINISTRATION here at the local level to the ADMINISTRATOR'S in Albany that write the policies that protect the Resident and takes all the WORKING TOOLS From the Staff. My Prayer's go out to MR.CL and his Family, Friends, and to the Staff at Tryon, That I know are all Professionals in what ever Dept. they work in from Food Service, Medical, Education and The YDA's That are on the floor 24 hours a day, 7 days a week. What a HORRIBLE way to end a LIFE TIME CAREER

## JUSTATAXPAYER

**08-26-08 3:50 PM** Why has this incident not been reported by the LH? If this were one of the youths in there, they'd be all over it.  
[»Report Abuse](#)

## sawxfan34

**08-26-08 2:43 PM** I GUESS THIS HAPPENED A COUPLE WEEKS AGO WITH THIS YDA BEING STRUCK IN THE HEAD. BUT SINCE THEN HE SUFFERED A STROKE FROM AN ANEURYSM IN HIS HEAD WHICH COULDA BEEN CAUSED FROM A BLOW TO THE HEAD SUCH AS THIS. I HEARD THIS FROM A FRIEND WHO STILL WORKS AT THE FACILITY. I PERSONALLY HAD THE PLEASURE TO WORK WITH THIS YDA AND HE WAS GREAT MAN, AND A JOY TO WORK WITH. ITS A SAD DAY FOR ME, AND IM SURE MANY CO WORKERS AT THE FACILITY. MY THOUGHTS AND PRAYERS ARE WITH HIS FAMILY AND HE WILL MOST DEFINATELY BE MISSED  
[»Report Abuse](#)

## LHReader

**08-26-08 2:31 PM** This is the first I've heard of this, I think it's horrible, my thoughts and prayers are with the YDA and his family.  
[»Report Abuse](#)

I had family member that worked there in the past... heard some stories,it can be a scary job at times.I can honestly say I am glad I don't work there.

## GOGETTER

**08-26-08 1:52 PM** I have a brother in law that works for Tryon. Word is that he slipped into a coma after finding bleeding on the brain..and is on life support.  
[»Report Abuse](#)

## Ashley

**08-26-08 12:12 PM** Has anybody heard how the YDA is that got hit on the head with the 2 x 4? I heard that he is not doing well. Any info out there?  
[»Report Abuse](#)

## Injuries at Tryon outrage surgeon

<http://www.leaderherald.com/page/content.detail/id/505032.html>

## guphi pup

**08-25-08 1:31 PM** I am so saddened by the fact Ms. Carrion doesn't feel concern for the men and women that choose to care for these "children". It has become so bad is seems the inmates are running the facilities without any recourse for their actions. The comprehensive retraining Ms. Carrion talks about are memoes and lists of what you will and won't do. Also if Ms. carrion doesn't want to read negative things about herself she needs to change jobs, that is what happens when you take on a position of control. She can't seriously think she can get away with the ridiculous changes and not be challenged.  
[»Report Abuse](#)

## beenthere2

**08-22-08 9:32 PM** Could just be a rumor but I have heard that people have deliberately been

## guphiepup

[»Report Abuse](#) posing as YDA's and making ridiculous postings to make staff look bad. Please say it isn't so!!!

## Goneforgood

**08-22-08 10:17 AM** [»Report Abuse](#) As a 25 yr. employee of OCFS, nearly 10 at Tryon, I can attest to Dr. Ortiz comments. This state of affairs is a DIRECT result of the pathetic excuse for a Commissioner, Gladys Carrion. What "extensive training" is she talking about? She must be referring to fines, suspensions and reports to the Child Abuse registry against innocent staff. She can't possibly be referring to the week we spent with the "trainers" for the infamous Sanctuary program. These folks had never stepped foot in a juvenile detention program before. They spent most of the week listening in awe at what it's like to work in our environment. They haven't been seen since. Ms. Carrion is trying desperately to make everyone but her the scapegoat in a failed program. The Agency needs a person with experience in working with juvenile delinquents and their challenges in reintegrating into society. A good Commissioner would have ASKED far more questions before deciding to "reform" the

## ignoredissue

**08-21-08 9:36 PM** [»Report Abuse](#) In my post at 08-21-08 7:58 PM, very important word NO was replaced with the word THE by mistake, there was no actual training.

"There was NO actual training and practicing dealing with behavior problems that stem from prior trauma, deescalating stressed and aggressive youth acting out due to prior trauma or keeping a large group of mixed gang related residents that becomes hyper and aggressive at the first sight of violence with these mental illnesses she speaks of calm and relaxed."

## RSanity2

**08-21-08 7:07 PM** [»Report Abuse](#) It is pretty clear that those running Tryon are no longer in control. Therefore I speak to the staff. You do not have to take being assaulted. These inmates are not above the law. I can honestly say, I have had thirteen students arrested for assaulting another. You the staff need to call in law enforcement officers. Have arrested those running Tryon as well as the inmates. NYS. you have an obligation to remove this pair running Tryon and bring them up on charges. If you don't I strongly recommend the staff bring charges against them as well as the inmates.

## Spongebob

**08-21-08 7:04 PM** [»Report Abuse](#) Is it true that Tryon staff is not allowed to respond on here or any other news media? Aside from Mrs. Carrion, is there an unbalanced or high number of Spanish or African-American people in charge at OCFS compared to a Caucasian? If anyone knows yes or no please respond....

## guphiepup

**08-21-08 6:40 PM** [»Report Abuse](#) I am so glad to see a Dr. making comment concerning the ever growing injuries OCFS staff are receiving at the hands of children. I do not work at Tryon but at another OCFS facility and we are also seeing staff being

**guphiepup**

physically abused and verbally abused. There is no recourse for the staff. Since when has it become ok for a child to disrespect adults and it should never be ok for children to put their hands on anyone. I have raised children and would never have even expected to be touched or sworn at, they knew this at a young age. The people that choose to work with children are not bad people. They are not in these jobs to hurt or abuse any child. Nor should they expect to go to work and feel threatened on any level. Ms. Carrion and those that support her need to look at the past. Also if the families that have these children could prevent them from making bad choices I am sure they would have done that long before they got into the juvenile system. Stop this madness.

**mattym**

**08-21-08 6:23 PM**

[»Report Abuse](#)

It is not right that all of these child care workers are getting hurt. As Commissioner of OCFS, Ms. Carrion should be concerned about the welfare of the children and the staff that serve them. If it is true she only cares about the kids she should be relieved of her duties. It takes a lot of people to help rehabilitate kids not just the administration. This is a deplorable situation. I do hope Governor Paterson is aware of these conditions.

NYS OCFS: "A culture of brutality" at Tryon

<http://www.nowpublic.com/world/nys-ocfs-culture-brutality-tryon#comments>

*Ruben Hughes (not verified)*

at 13:57 on August 28th, 2009

In spite of the US DOJ's investigation, on the three limited facilities and girl's secure center, the glaring fact remains that staff are being assaulted, murdered, and raped at OCFS facilities, without even a comment from Carrion the Commissioner. She endorsed the restraint policy and the changes, concerning when staff are authorized 3 (THREE) instances to use physical restraint. I work at Brookwood Secure in Columbia Co., why is it that with all the staff assaults there, and the alarming number of residents refusing to move, or lockdown when directed, Carrion is not coming to the forefront on this and remains indifferent? The number of vicious and malicious gang assaults on peers, and the total disregard for rules and compliance is increasing daily. Take a look at all the staff overtime, and staff out on workers comp, as a result of being injured while PROPERLY CONDUCTING A RESTRAINT. The inquiry is biased and one sided at best, and doesn't reflect the "real issues not only at Brookwood," but all the facilities statewide. As a line-staff who interacts with youth daily, I don't have the mindset to brutalize youth, and the majority of YDA'S (youth division aides) don't want to be the subject of child abuse/ maltreatment charges. This is our livelihood, unfortunately, we are not supported by Carrion and her cronies, and CSEA, the local union. The general public isn't aware that even those youth, that are tried as adults, in criminal court for murder and armed robbery, if under the age of 18, are considered children as it pertains to child abuse. One of my fellow YDA's had his nose fractured, after being struck with a chair, from a 6ft 2 inch 280 lb youth, who happens to be 15 years old. It takes at least 4-5 staff

to restrain this individual. The youth happens to be on the mental health unit, and is severely mentally ill, with the mindset of a 6 year old. How do we as staff, contain a struggling and resistive youth this size, without being physical? I hope the feds do come in and oversee OCFS facilities, surely it will be vastly better than the current PASSIVE and very LIBERAL current state of affairs. I didn't sign up for this job to be assaulted physically by these punks, and I'm not going out on a stretcher either(TRUST ME). At one point, we had 6 youth in the Columbia Co. jail, for either assaulting staff or other youth. Everytime I turn around, the OCFS Ombudsman/GESTAPO, resident legal folks are interrogating a staff, and are looking for inconsistencies, even though there are cameras and recording devices throughout both buildings. The MSP/lockdown unit is a thing of the past since the "pacifier givers" did a tour of our facility. These are dangerous juvenile criminals, who don't give a damn about the next victim, very few when released will lead productive, crime free lives, most will end up in the penitentiary, or dead (FACT). I am not advocating any abuse whatsoever, from anyone, however how do we contain and control these youth, without being labeled by Carrion as "intransigence". This is a insult and a travesty due to Carrion's unrealistic and dilusional perceptions, that's right I said it! Carrion has has the "reverse midas (mythical Greek mythology) touch," the more changes in facilities, the worst situations become. She has skillfully and willfully, shifted focus on her inadquacies and lack of facility operational expertise (absolutely NONE) to staff not doing things her way. Anyone not on board with her, is terminated. Her staff (DJJOY) are buttkissing lackies, and are in lockstep with her even though some way not be in agreement with her. THE MADDNESS CONTINUES!!!!!!!!!!!!!!!

### **Greco's murder triggers tough questions for NYS OCFS**

<http://www.nowpublic.com/world/grecos-murder-triggers-tough-questions-nys-ocfs>

*Ruben Hughes-YDA\_4 (not verified)*

at 11:15 on August 13th, 2009

I happen to work at a secure facility-Brookwood/OCFS, Commissioner Carrion is intentionally and willfully making all facilities unsafe for staff and residents. There are increasing numbers of gang assaults-one against many attackers, staff being assaulted by youth, no severe consequences being taken, no line staff input as to their concerns and frustrations. This contributes to low morale, indifference and a sense of futility. She can state that she's saving money by closing facilities, and can implement ineffective initiatives, however, the tragic and senseless murder is a direct result of Commissioner Carrion's incompetence, and her staff's insistence to remain lock step with her policies, to keep their jobs at the expense of staff. Everyone knows this except for Commissioner Carrion and her Deputies and associate Commissioners. It will only get worse, trust me!

*TimothyS (not verified)*

at 22:50 on June 15th, 2009

Those questions definitely need to be asked, but it should not be forgotten that these two youths were set to be released soon. Who assessed these kids? The same should have been asked years ago after the sick murder of Jennifer Bolander in the Falls.

**Senator Young calls for state investigation into NYS OCFS**

<http://www.nowpublic.com/world/senator-young-calls-state-investigation-nys-ocfs>

*[Barbara McPherson](#)*

at 10:16 on June 11th, 2009

If there were six 'troubled' youths in the group home, a young woman should not have been expected to work alone. She should have had a male partner to work with no matter what the level of risk. It would not have been appropriate to have a young male supervising six 'troubled' females. What were the administrators thinking?

*Jackpoy (not verified)*

Everyone in this state should be very afraid of Commissioner Carrion. She would have these troubled youth back in school with your children...what then? Remeber the YDA (gaurd) who was beaten over the head with a two-by-four type piece of wood. He later had a stroke and died. This, however, had nothing to do with his death.....just a coincidence I suppose. How many more innocent people have to die before we realize YDAs and Youth counselors deal with dangerous criminals **regardless** of their age.

*juviworker (not verified)*

I work in at a location where a staff got hit in the head with a chair thrown by a youth (female) in the classroom 2wks ago. Now it looks like they are trying to have the charges dropped.

*Bob Counselor (not verified)*

at 20:39 on June 16th, 2009

FYI even Secure facilities For boys are have issues with assaults ,and dangerous violence ,many other youths in these places are being sent to county jails after assaults on staff and other residents.. but these are not making the news. It,s around the entire state... Carrion has tied our hands and have given control over to the kids.. Heck ,carrion has even approved a "social night" .This is a night when the a Youth may invite A female of there choice into a secure facility for a DANCE.. This is a max secure facility!!!! Come on!! Keep digging!! A Yda Even lost the tip of his finger months ago. Gang assaults

*juviworker (not verified)*

You are right, I work down state in non-secure, with limited secure kids. Thats all we are aloud to know about them. The are not being held accountable for their actions while in placement. Does the fact that they are teenagers make it less of a crime. The fact of the matter is these are not 8, 9 or 10 yr olds. We work with youth that are 13+ and weight between 120-200+ lbs and are aggressive, destructive, and very criminally minded. The YDA's need to be supported so the youth will fall in line, not the other way around.

*Bob Counselor (not verified)*

at 20:47 on June 16th, 2009

We Need the media To expose Carrion .. Please help us in OCFS..Thats 2deaths in less than one year.How many more will die under her ?

[Yeast Infection](#)

Well only media can help us bringing out in public,people who are behind all this...

*no where to turn (not verified)*

at 06:21 on June 18th, 2009

As a worker of OCFS,the public needs to know whats happening with our state workers. All u hear about is layoffs and cutbacks, welll this is what happens when they do this.As a woman in OCFS I know for a fact that u cannot search a male youth if needed so whats the deal , a women should have NEVER been left alone with these youth.If an instance came up where a search was needed its against policy to search them.I hope the investigations keep going , this is our only hope. This is the second death in OCFS at the hands of these youth offenders, not to mention the rising number of assaults on our staff. OCFS workers feel like there is no where to turn when trying to express the danger in all our facilities. We have tried to no avail. Carrion right now is so high on herself that she needs a reality check, I think its horrible that the reality check is Renee Greco.

[Justice2009](#)

Unfortunately someone had to be killed for an investigation into Commisioner Gladys Carrions mission which is to treat all youth with in their communities. However, this is not the first serious incident, there has been many including rapes and the shooting of the Rochester Police Officer not long ago. Commisioner Carrion uses the "smoke in the mirrors" trick, stating that she is saving taxpayers money by keeping these high risk adolescents in their communities. However, it is at the risk of community safety. Before Commisioner Carrion was appointed there were rules and policies in place, but she has changed this. When OCFS staff try to express their concerns, she threatens them with their jobs or will say they only are disgruntled employees who are losing their jobs. As the old saying goes, the truth will come out in the end, but how many other innocent people will be hurt or killed Ms. Carrion???

*Sneez (not verified)*

Windham Lawn/ 'Training continues in trauma treatment '- Yeah right! Were trained by our peers. Biggest crock of hog wash!!! Training started only after 'the program' was in effect for over a year. Truly the left hand did NOT know what the right hand was or is doing!!

### **Lawmakers Call For Action After Death of Counselor**

<http://www.wgrz.com/news/local/story.aspx?storyid=67571&catid=13>

### **In your voice**

#### **READ REACTIONS TO THIS STORY**

**ignoredissue** wrote:

DaringRebel,

"im fed up with these courts just sending these kids into homes"

WHY DON'T YOU TAKE THEM TO YOUR HOME MAYBE YOU CAN HAVE THE SAME OUTCOME. SHE HAD A BLANKET THROWN OVER HER HEAD AND SHE WAS BEAT TO DEATH WITH SOME OBJECT. WAKE UP NOT ALL "CHILDREN" CAN BE HELPED!!! SOME ARE JUST ANIMALS WHO DO NOT RESPECT PEOPLE OR LIFE AT ALL AND THEY ARE BETTER OFF TOSSED ASIDE AND FORGOTTEN ABOUT IN A HOLE SO THIS DOES NOT HAPPEN TO GOOD PEOPLE.....

6/15/2009 9:23 AM EDT on wgrz.com

**shutterbug\_11** wrote:

DaringRebel,

I am completely appalled by your statements. Not only would it tick me off in general even if I didn't know her; but I knew Renee through a friend of mine and your talking as if she got was coming to her because of ignorance? I agree with you that this case should be investigated and steps should be taken to avoid scenarios like this in the future, but to make an accusation that Renee could have prepared herself?! Street smart or not which you don't personally know about Renee by the way, she had a blanket thrown over her head! Do you think her murderers walked up to her with a blanket in the air and warned her "we're going to kill you now"? No they snuck up from behind her and beat her! You have nerve to say that she should've expected something like that because they are troubled and potentially dangerous. Some people unlike you apparently, have hope that they can make a difference in someone's life even though there can be risks. There are risks



in everyday life and careers and no matter who is more 'street smart" then another doesn't matter in the end..

R.I.P Renee

6/14/2009 10:13 PM EDT on wgrz.com

**horseladyny** wrote:

DaringRebel you are OBVIOUSLY ignorant! Do you know how many of us former and current employees have expressed our fears of how unsafe we felt to the administration?? MANY times and yet NOTHING was done about it!

6/13/2009 12:46 PM EDT on wgrz.com

**DeeFrootloop** wrote:

DaringRebel.. I'm so angry at your comments that I'm sitting here shaking. Who the hell do you think you are blaming the victim of a brutal attack?!?! How freakin' dare you. She was a VICTIM. What don't you understand about that?

The older boy stated that someone was going to die that night.. whether it was Renee or not.

Do you blame all victims of horrible crimes, or just women?

6/13/2009 10:24 AM EDT on wgrz.com

**DaringRebel** wrote:

whether she did or didnt is not the point. how many times have women been told not to jog alone or walk alone in bad areas or dont walk through parking lots alone at night or watch how you hold your purse. as much as this is a horrible crime, how do you know she did?? if she did maybe this wouldnt have happened. if she didn't than why not? pressure from above? afraid of losing her job?if she was there for a long time, she got too comfortable in her job like many do and than forget to do their job!!! college educated,but not street smart!!! the street smart people are the ones in these houses, and they need to get better trained and more people who have some life experience's who have had to be on alert at one time or another in their lives.watching out for themselves regardless of their paycheck,and not some young college educated young woman who thinks these people are friends. im sorry for the family's loss, but you just cant hire young adults for these jobs. i dont care if they have 10 masters degrees. learn a little about life first before you just take a job like this. the people who run these places dont care . theyre the ones making the money under the table like the judges who send them there(right lancaster?)while they pay these young adults nothing. whoever is in charge should be suspended/fired and a full investigation should be under way to see that this does not happen again in any of these homes and hiring practice's should be watched closely and these programs are getting money from taxpayers who arent paying attention either to where their money goes.

who is in control of how these monies are being payed out to these courts that are sending kids there? NO ONE!!!

6/13/2009 7:52 AM EDT on wgrz.com

**Wyldbutterfly** wrote:

DarinRebel wrote: " she wasnt smart enough to speak up and say, i dont want to be left alone with these kids who show signs of violence? "

This really ticks me off!!!!!!!!!!!!!!!!!!!!!! You have no idea if Renee spoke of her concerns to her employer!!!

6/13/2009 6:14 AM EDT on wgrz.com

**Ifeltunsafe** wrote:

While Julie Tomasini may be a "compassionate" person but New Directions should immediately bar her from making any statements to the public. Good for her that she has never felt threatened in her job. She has been a social worker and a clinical director--meaning she has never spent 5 minutes alone with 5 teens, let alone in an isolated setting at night. I worked full time at New Directions, and at 6ft & 200lbs, I DEFINITELY had experiences where I felt threatened at work. A previous poster was correct about the training for restraints---if you try to break up an altercation by yourself and a resident gets hurt, you run the risk of being charged with child abuse. There have been a lot of kids helped by the system, especially those from bad homes, but there are just as many delinquents that are simply being housed in these facilities that are a danger to the staff & other residents.

6/12/2009 11:18 AM EDT on wgrz.com

**DaringRebel** wrote:

these rehab and halfway houses and drug dependency units are costing the public a fortune!! yes this incident in lockport was horrible. try and look at it from another side. no good dirty egg suckin' corrupt judges who send your kids to these places knowing that they get kickbacks for themselves and the little puppets they hire to help them. the people running these places are getting so much money for themselves and than they hire young kids out of college and pay them minimum wage to watch over kids who have drug and violence issues. there are so many kids graduating from college who know nothing of life. their a dime a dozen these counselors. no experience at all. she wasnt smart enough to speak up and say, i dont want to be left alone with these kids who show signs of violence? who should the family blame? courts and the people running these places thats who! no one is watching them. the people who say they are, are liars. their filling their pockets with corrupt money. and its your tax dollars!!!! blame yourselves to...

6/12/2009 10:47 AM EDT on wgrz.com

**DaringRebel** wrote:

im fed up with these courts just sending these kids into homes that dont work. all their doing is making matters worse for the kids. yes they can be bad but does that mean we should toss these kids aside and forget them or do we look into the court system thats making alot of money under the table(like lancaster)just so they can justify the money

6/12/2009 10:15 AM EDT on wgrz.com

**wnyamerican** wrote:

I live very close to Wyndham Lawn and believe me, it's not fun. The kids run away and the cops have to find them. Staff is told not to try and keep them from fleeing. Management won't tell us why the kids are there, it violates their rights. What about our rights???? They pay bare minimum wages and expect staff to perform miracles. When the Diagnostics Center was at the Niagara County Fairgrounds the staff was as much of a problem as the kids were. They broke into buildings,etc. I know these kids need help and some are not really bad kids, sometimes their parents have failed them. However, there are kids at Wyndham that have committed crimes and are mixed in with the poor kids that just need a little help. The state should not allow such a diverse group of kids to be housed together. Add to that the kids that come there for day school and it really gets crazy. The neighborhood told Wyndham Lawn six years ago to sell the property and go build a facility out in the middle of nowhere before we have a tragedy. They told us they didn't think there would ever be a problem. Since then 2 brothers were released and 2 weeks later murdered Jennifer Bolander in Niagara Falls. Kids have stolen cars, they've had near riots and now this poor girl has been murdered. It's time to close this facility and move the programs to a secure location, not in the middle of small town America.

6/11/2009 11:47 PM EDT on wgrz.com

**horseladyny** wrote:

Moreinfo, how about the people who are "formulating their opinions" that used to be employed by New Directions?! It's the same outrage and devastation as those that have never been involved with the agency. You can be "caring, compassionate, and dedicated" but that is NOT enough as you can see. It's about darn time the truth came out about that place.

Lets "focus that rage" on everyone involved, not just the two killers.

6/11/2009 2:37 PM EDT on wgrz.com

**drtomas** wrote:

Dear moreinfo2it.....How much more info does one need....she had a blanket put over her head and she was beaten to death. She was there by herself. It was state policy for her to be there by herself. That was like 3

seconds. More like fullofit.  
6/11/2009 11:34 AM EDT on wgrz.com

**DeeFrootloop** wrote:

Moreinfo2it, you're right.. perhaps the "I hope you can't sleep at night" that I ended my post with was a little bit harsh. I'm sure they're devastated, too.. But they need to accept some responsibility here. By basically saying, "well, \*I\* never felt threatened, sooooooo..", Tomasi is completely passing the blame and not admitting that the current policies are in no way safe for these workers. I'm not saying that Tomasi isn't a caring and compassionate woman, but she had no right to say what she did. It insinuated that somehow, Renee had lost control of the boys that night, which is absolutely not true.

There is ZERO reason for Renee to have been in charge of those boys by herself, and especially not at night. No woman should be left alone with a bunch of misfits. Seriously, how can that NOT be an issue with the company? Renee was not the type of woman to just not do her job. The company's lack of safety measures put her and other workers in harm's way. Period. End of story.

Renee was a kind-hearted woman who was just doing her job, which she took pride in.. and her life was cut far too short \*because\* of that job.

**dutch2** wrote:

moreinfo, sure the two thugs are ultimately to blame, but New Direction has a share of the blame as well. This "policy" was BS and YOU know it as well as the rest of us do! The fact that this Tomasi could not admit it was just plain stupid to have one 24 year old girl alone with 5-6 teenaged boys is simply pathetic.

6/11/2009 11:15 AM EDT on wgrz.com

**moreinfo2it** wrote:

As someone who knows the staff personally at this group home and this agency, I can say each and every one of them are devastated by Renee's death. I am saddened to see that people formulate their opinions based upon a 5 second clip of an entire interview. It is unfortunate that their sadness and outrage about this horrific event was not portrayed in the news. As far as Julie Tomasi, she is one of the most caring, compassionate, and dedicated people I know.

An entire community is outraged at a brutally horrible act. Let's focus that rage at the two people that really deserve it..Anthony Allen and Robert

Thousand.

6/11/2009 11:06 AM EDT on wgrz.com

**dutch2** wrote:

Also does it really matter if Tomasi "never felt threatened"??? Whether anyone actually "felt" threatened is not the point! The point is it was NOT EVER a safe environment for any one person (female OR male) to be in alone! It is way to easy for a group of 5 or 6 to overtake one person. Again...COMMON SENSE!!!!

6/11/2009 11:02 AM EDT on wgrz.com

**dutch2** wrote:

Great, they followed State policy (because we all know how reliable and efficiently the state works!)...how about the policy of COMMON SENSE???????? These people should be held accountable right alongside the actual murderers!

6/11/2009 10:57 AM EDT on wgrz.com

**DeeFrootloop** wrote:

"Julie Tomasi says Greco had the training, was capable of keeping the home under control, "I guess my reaction is, first of all as a woman who has worked in that program for the past ten years, I never once [felt] that I was unsafe or unable to do my job as a woman."

Wow.. just WOW. Did she really just say that s\*\*t?? Oh, hell no. What a disgusting statement. Nice try covering her butt, but how dare she in any way whatsoever try to place blame on anyone other than these boys and this organization's policies, or lack thereof.

Seriously, just because she never felt unsafe, does that automatically mean that it WAS a safe situation? No, it sure doesn't. Two completely different things. Lots of things can appear safe, but it doesn't mean that they are. How in the hell are you supposed to be able to "keep the home under control" when you have a blanket over your head and being beaten to death?

And just because Tomasi personally never felt unsafe (which I guarantee is a bold faced lie), it certainly doesn't mean that Renee didn't at any point. In fact, I've heard quite a few people mention that Renee had said that she felt uncomfortable many times.

This organization needs to be investigated heavily.. and you damn well better do more than "review" your policies. Renee was murdered because of your lack of adequate safety measures. How about taking some of that responsibility now instead of trying to place blame elsewhere? You OWE

Renee more than that. I really hope you can't sleep at night.

6/11/2009 10:34 AM EDT on wgrz.com

**Blizzard** wrote:

Excuse me????? State policy says that only one lone person needs to be in charge of these kids. Who made up this rule? A girl is dead because of the stupidity of the state? The group home is responsible! Just because the state has that policy doesn't mean the group home can't have security! Do they not understand that these kids are dangerous? Some one needs to pay and I mean pay dearly!

6/11/2009 9:52 AM EDT on wgrz.com

**JRbuff** wrote:

This is outrageous. The people who allowed this one girl to be alone with 5 criminals are complicit in her murder. There is no excuse at all for what they allowed to happen.

And criminal kids should be in jail, not in houses in someone's neighborhood. Totally ridiculous.

6/11/2009 9:34 AM EDT on wgrz.com

**horseladyny** wrote:

As a former employee, yes we are trained (if that's what you want to call it)... but we are trained to restrain using TWO people, we do NOT have permission to take down a person solo, you WILL be fired and you WILL ruin your professional career if you do. If there is an uproar like that night, how the heck do you expect us to calm the chaos when it is a 6:1 ratio?! It's ILLEGAL to have just one person! Think of lawsuits and past inappropriate staff-student relationships, we were not permitted to be alone with kids of the opposite gender either! Staff have been accused and yelled at over the years about it.

I feel so sorry for Renee and her family, but I'm not surprised this happened, only that this tragedy didn't happen to someone sooner. The average turnover rate for staff in these types of positions is 6 months. Renee had the experience but not the backup. Many of the NEW staff in her position disclose a lot of confidential information to kids (who are NOT that much older than them!) and foolishly make accusations which could escalate a child to a dangerous level.

Oh and Julie, we know you are full of it! Just another cover-up by Wyndham Lawn.

Again, this is why I left.

**chezgirl** wrote:

I am so fed up with the State regs excuse. We get these state regs from a bunch of yahoo's sitting in an office crunching numbers according to some formula to come up with number of staff per number of clients. 9 times out of 10 times these number crunchers have no idea what the work environment is like and nor do they have any interest in finding out because the dollars are the priority and not staff or client safety. These 2 thugs could have gone after another youth and killed them and how is one staff going to stop them. I hope her family sues.

6/10/2009 11:26 PM EDT on wgrz.com

1 UNITED STATES COURT OF APPEALS

2  
3 FOR THE SECOND CIRCUIT

4  
5 August Term 2007

6  
7 (Argued: October 25, 2007

Decided: October 14, 2008)

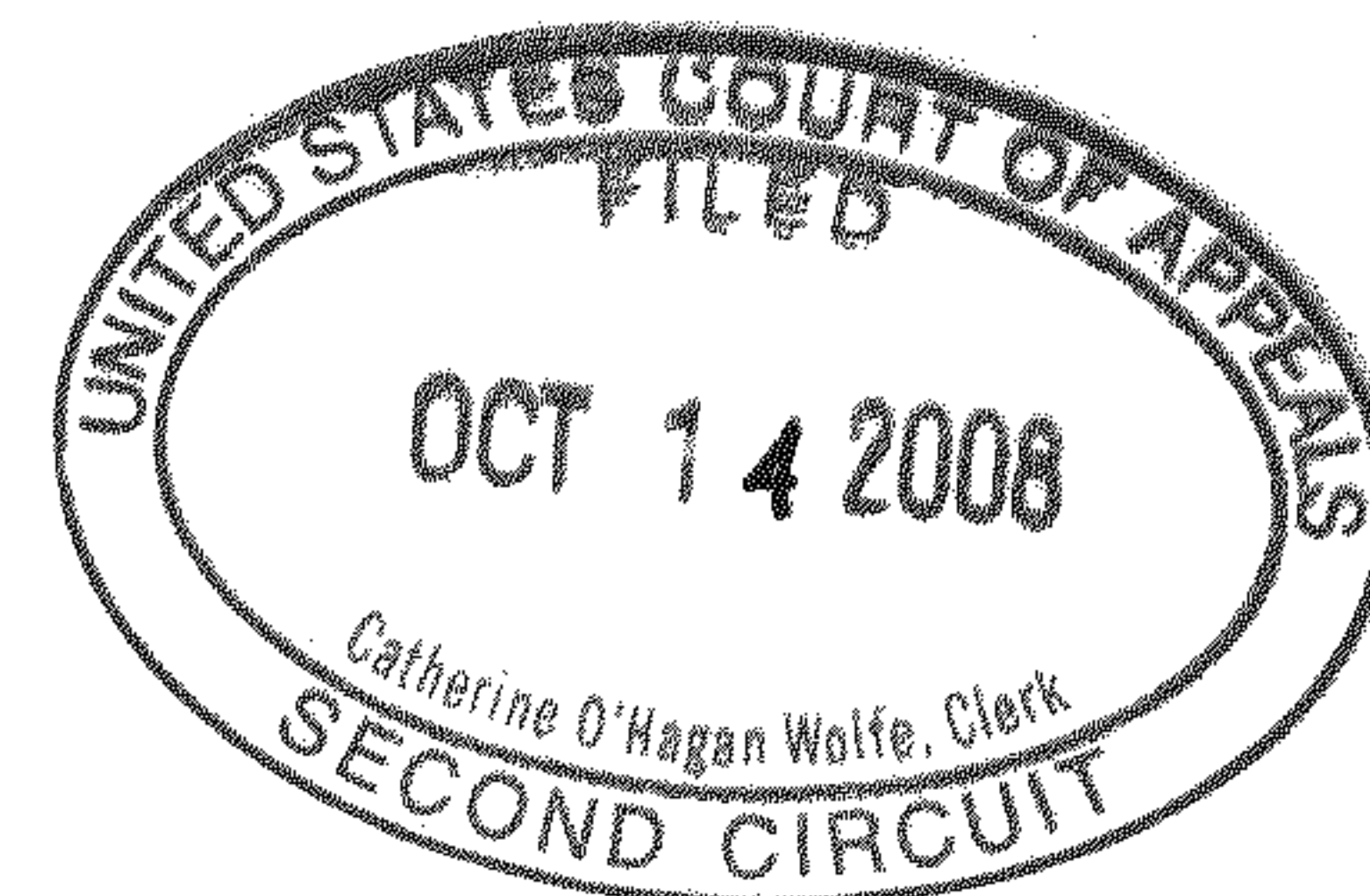
8  
9 Docket No. 05-7010-cv

10  
11 -----X  
12  
13 BRUCE CHAPMAN AND HANDLE WITH CARE BEHAVIOR  
14 MANAGEMENT SYSTEM, INC.,

15  
16 Plaintiffs-Appellants,

17  
18 -- v. --

19  
20 NEW YORK STATE DIVISION FOR YOUTH, NEW YORK STATE  
21 OFFICE OF CHILDREN & FAMILY SERVICE, NEW YORK STATE  
22 DEPARTMENT OF SOCIAL SERVICES, JOHN JOHNSON,  
23 Commissioner of New York State Office of Children and  
24 Family Services, and former Commissioner of the New  
25 York State Division for Youth, in his official and  
26 individual capacity, MARGARET DAVIS, former Director  
27 of Training for the New York State Division for  
28 Youth, and former Director of Training for New York  
29 State Office of Children and Family Services, in her  
30 official and individual capacity, PATSY MURRAY,  
31 former Associate Training Technician for the New York  
32 State Division for Youth, and current position as  
33 Trainer for New York State Office of Children and  
34 Family Services, in her official and individual  
35 capacity, CORNELL UNIVERSITY, JEFFREY LEHMAN,  
36 President of Cornell University, in his official and  
37 individual capacity, DOCTOR HUNTER RAWLINGS, III,  
38 former President of Cornell University, in his  
39 official and individual capacity, NEW YORK STATE  
40 COLLEGE OF HUMAN ECOLOGY, FAMILY LIFE DEVELOPMENT  
41 CENTER, RESIDENTIAL CHILD CARE PROJECT, THERAPEUTIC  
42 CRISIS INTERVENTION, MARTHA HOLDEN, Project Director  
43 of the Residential Child Care Project and Therapeutic  
44 Crisis Intervention Trainer and Coordinator, in her





1 official and individual capacity, MICHAEL NUNNO,  
2 Project Director of the Residential Child Care  
3 Project and Therapeutic Crisis Intervention Trainer  
4 and Coordinator, in his official and individual  
5 capacity, HILLSIDE CHILDREN'S CENTER, DENNIS  
6 RICHARDSON, President and CEO of Hillside Children's  
7 Center, in his official and individual capacity,  
8 DOUGLAS BIDLEMAN, Employee of Hillside Children's  
9 Center and Therapeutic Crisis Intervention Trainer,  
10 in his official and individual capacity,  
11  
12

13 Defendants-Cross-Defendants-Appellees.  
14

15 -----x  
16  
17 B e f o r e : WALKER, STRAUB, and POOLER, Circuit Judges.  
18

19 Plaintiffs-appellants seek review of an order of the United  
20 States District Court for the Northern District of New York  
21 (David N. Hurd, Judge) dismissing their copyright and antitrust  
22 claims pursuant to Fed. R. Civ. P. 12(b) and (c) and declining to  
23 exercise supplemental jurisdiction over their state law claims.  
24 The district court dismissed plaintiffs' copyright claims on the  
25 basis that a contract unambiguously granted the defendants a  
26 perpetual license to copy plaintiffs' materials. We conclude that  
27 the contract is ambiguous, and remand the case for further fact-  
28 finding on this issue. With regard to plaintiffs' antitrust  
29 claims, we agree with the district court that plaintiffs have  
30 failed to allege a plausible antitrust market. We therefore  
31 affirm the district court's order dismissing plaintiffs'  
32 antitrust claims with prejudice.

33 AFFIRMED in part; VACATED and REMANDED in part.

1 GUY L. HEINEMANN, Guy L. Heinemann,  
2 P.C. (Irene M. Vavulitsky, Guy L.  
3 Heinemann, P.C., and Hilary Adler,  
4 Law Offices of Hilary Adler,  
5 Gardiner, N.Y., on the brief), New  
6 York, N.Y., for Plaintiffs-  
7 Appellants.

8  
9 ANDREA OSER, Assistant Solicitor  
10 General (Daniel Smirlock, Deputy  
11 Solicitor General, on the brief),  
12 for Eliot Spitzer, Attorney General  
13 of the State of New York, Albany,  
14 N.Y., for Defendants-Appellees, New  
15 York State Division for Youth, New  
16 York State Department of Social  
17 Services; New York State Office of  
18 Children & Family Services, John  
19 Johnson; Margaret Davis, and Patsy  
20 Murray.

21  
22 NELSON E. ROTH (Valerie L. Cross  
23 and Norma W. Schwab, on the brief)  
24 Office of the University Counsel,  
25 Ithaca, N.Y., for Defendants-  
26 Appellees, Cornell University,  
27 Jeffrey Lehman, Hunter Rawlings,  
28 III, New York State College of  
29 Human Ecology, Family Life  
30 Development Center, Residential  
31 Child Care Project, Therapeutic  
32 Crisis Intervention, Martha Holden,  
33 and Michael Nunno.

34  
35 DAVID H. WALSH, Petrone & Petrone,  
36 P.C., Syracuse, N.Y., for  
37 Defendants-Appellees, Hillside  
38 Children's Center, Dennis  
39 Richardson, and Douglas Bidleman.

40  
41 JOHN M. WALKER, JR., Circuit Judge:

42 Plaintiffs-appellants Bruce Chapman and Handle With Care  
43 Behavior Management System, Inc., (collectively "HWC") market a  
44 training program ("Handle With Care") that teaches individuals a

1 safe technique for physically restraining others. HWC sued three  
2 groups of defendants alleging generally that they had infringed  
3 HWC's copyright and adversely affected the market for such  
4 restraint services in violation of the antitrust laws.

5 Specifically, HWC sued various New York state agencies and  
6 their officers and agents (collectively "the state defendants").  
7 The state defendants include: the New York State Office of  
8 Children and Family Services ("OCFS"), which in 1998 succeeded  
9 the New York State Division for Youth ("DFY") and the New York  
10 State Department of Social Services ("DSS") also named as  
11 defendants; John Johnson, the former Commissioner of DFY and the  
12 current Commissioner of OCFS; Margaret Davis, the former Director  
13 of Training for DFY and the current Director of Training for  
14 OCFS; and Patsy Murray, a former Associate Training Technician  
15 for DFY and current Trainer for OCFS.

16 HWC also sued Cornell University and the New York State  
17 College of Human Ecology (the "College") and related persons and  
18 entities (collectively "the Cornell defendants"). The Cornell  
19 defendants include: Cornell University; Jeffrey Lehman, Cornell's  
20 then-current president; Hunter Rawlings III, Cornell's former  
21 president; the College and subsidiaries the Family Life  
22 Development Center, the Residential Child Care Project, and  
23 Therapeutic Crisis Intervention ("TCI"); and Project Directors of  
24 the Residential Child Care Project and TCI Trainers and

1 Coordinators, Martha Holden and Michael Nunno.

2 Finally, HWC sued Hillside Children's Center ("HCC"), a  
3 private childcare provider and residential treatment center, and  
4 two of its officers, Dennis Richardson, HCC's president, and  
5 Douglas Bidleman, HCC's Coordinator for Sociotherapy  
6 (collectively "the Hillside defendants").

7 The state and Cornell defendants moved to dismiss the  
8 complaint pursuant to Fed. R. Civ. P. 12(b)(6), and the Hillside  
9 defendants moved to dismiss the complaint pursuant to Fed. R.  
10 Civ. P. 12(c). The district court granted both motions as to all  
11 of plaintiffs' federal claims and declined to exercise  
12 supplemental jurisdiction over the remaining state law claims.  
13 The federal claims dismissed were: (1) copyright infringement  
14 against the state defendants; and (2) conspiracy to monopolize  
15 and restrain trade, together with monopoly, restraint of trade,  
16 and unfair competition, against all defendants.

17 The district court dismissed plaintiffs' copyright claim on  
18 the basis that the contract at issue unambiguously granted the  
19 state defendants the right to copy plaintiffs' materials  
20 indefinitely. We disagree with that conclusion, find the  
21 contract ambiguous, and remand the case to the district court to  
22 determine the duration of the license to copy plaintiffs'  
23 materials granted under the contract.

24 With regard to the antitrust claims, the district court held

1 that the plaintiffs failed to offer a plausible relevant market  
2 in which the defendants monopolized the trade for restraint  
3 services or engaged in restraint of trade or unfair competition  
4 with respect thereto. We agree that the plaintiffs have failed  
5 to define a plausible market and conclude that the plaintiffs  
6 cannot establish that the defendants have substantial market  
7 power in the market for restraint services properly defined.  
8 Accordingly, we affirm the district court's dismissal of  
9 plaintiffs' antitrust claims and vacate the district court's  
10 dismissal of the copyright claim against the state defendants.

#### 11 12 **BACKGROUND**

13 For purposes of reviewing a motion to dismiss, we assume the  
14 accuracy of the plaintiffs' allegations in their complaint.  
15 Patane v. Clark, 508 F.3d 106, 111 (2d Cir. 2007) (per curiam).  
16 "[O]ur review is limited to undisputed documents, such as a  
17 written contract attached to, or incorporated by reference in,  
18 the complaint." Official Comm. Of Unsecured Creditors of Color  
19 Tile, Inc. v. Coopers & Lybrand, L.L.P., 322 F.3d 147, 160 n.7  
20 (2d Cir. 2003) (citing Cortec Indus., Inc. v. Sum Holding, L.P.,  
21 949 F.2d 42, 47 (2d Cir. 1991)).

22 OCFS (previously DFY and DSS) operates juvenile facilities  
23 and monitors child care providers in the state of New York. The  
24 New York legislature mandated that OCFS:

1 promulgate regulations concerning standards for the  
2 protection of children in residential facilities and  
3 programs operated or certified by the division, from abuse  
4 and maltreatment. . . Such standards shall . . . establish  
5 as a priority that: . . . administrators, employees,  
6 volunteers and consultants receive training in . . .: the  
7 characteristics of children in care and techniques of group  
8 and child management including crisis intervention.  
9

10 N.Y. Exec. Law § 501(12); see also N.Y. Soc. Serv. Law §  
11 462(1)(c). To that end, state regulations require that each  
12 supervised child care facility "submit[] its restraint policy to  
13 [OCFS]" and prohibit the use of "any method of restraint unless  
14 it has . . . been approved in writing by [OCFS]." 18 N.Y. Comp.  
15 Codes R. & Regs. § 441.17(c).

16 In 1987, New York State purchased HWC's method for use in  
17 its own facilities. That year, DFY contracted with HWC to  
18 provide training in HWC's methods to its staff (the "1987  
19 contract"). The 1987 contract provided that HWC would train 120  
20 DFY staff members over fifteen days in HWC's methods. It further  
21 provided that HWC would furnish DFY with one "copy of Handle With  
22 Care (copyrighted) which [DFY] may reproduce in whole or in part  
23 as required by [DFY]" and "a videomaster of the restraint program  
24 to be used by [DFY's] master trainers in conducting training  
25 programs for facility staff." Finally, the contract stated that  
26 "[t]his agreement shall commence January 1, 1988 and end March  
27 31, 1988." There is no dispute that HWC fulfilled its  
28 obligations under the 1987 contract and trained 120 DFY staff,

1 some of whom were master trainers, during the relevant three-  
2 month term. In 1997, however, after two incidents at DFY  
3 facilities in which children were harmed by the use of improper  
4 restraint techniques, DFY requested that HWC provide retraining  
5 to its staff.

6 The resulting contract (the "1997 contract") provided that  
7 HWC would "update and recertify existing [DFY] Crisis  
8 Management/Physical Restraint trainers in the techniques  
9 encompassed in the Handle With Care program;" that it would  
10 "deliver twelve (12) days of training to approximately one  
11 hundred twenty (120) existing [DFY] trainers;" and that DFY had  
12 "the right to reproduce all training materials."<sup>1</sup> The contract  
13 provided that the "agreement shall commence May 1, 1997 and end  
14 August 31, 1997." Additionally, HWC required DFY staff members  
15 to sign individual contracts acknowledging that their  
16 certification to train in HWC's methods terminated after one  
17 year.

18 HWC furnished the training and materials in conformity with  
19 the 1997 contract. Thereafter, there is no dispute that DFY  
20 master trainers, using HWC's materials, trained the rest of DFY's  
21 staff in the HWC method. A year later, DFY merged into OCFS and  
22 the latter continued to use HWC's materials to train its staff.

---

1 <sup>1</sup> We note that, as defendants acknowledge on appeal, the  
2 district court was mistaken in its view that the contract was  
3 "drafted by Chapman."

1 HWC faced competition in the restraint method and training  
2 business. Cornell, in partnership with the State of New York,  
3 developed and marketed its own restraint method and training  
4 services called Therapeutic Crisis Intervention ("TCI"). HWC and  
5 TCI competed in providing restraint training services to various  
6 agencies, organizations, and businesses.

7 Sometime after DFY merged with OCFS in 1998, OCFS began to  
8 withhold its approval of each facility's restraint method unless  
9 the TCI method was used. After learning of the alleged policy  
10 change at OCFS, HWC filed the instant action challenging the  
11 policy, claiming that OCFS, Cornell, and HCC conspired to  
12 monopolize the market for restraint services in violation of the  
13 antitrust laws. HWC also claimed that OCFS infringed HWC's  
14 copyright by reproducing HWC's materials in 1998 and by  
15 continuing to use them and made various state law claims. After  
16 the district court dismissed these claims, HWC appealed.

## 17 18 **DISCUSSION**

### 19 **I. Legal Standard**

20 We review de novo the dismissal of a complaint for failure  
21 to state a claim, and accept all well-pleaded facts as true and  
22 consider those facts in the light most favorable to the  
23 plaintiff. Patane v. Clark, 508 F.3d 106, 111 (2d Cir. 2007)  
24 (per curiam).



1 To survive dismissal, the plaintiff must provide the grounds  
2 upon which his claim rests through factual allegations  
3 sufficient 'to raise a right to relief above the speculative  
4 level.' Once a claim has been adequately stated, it may be  
5 supported by showing any set of facts consistent with the  
6 allegations in the complaint.

7  
8 ATSI Commc'ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 98 (2d Cir.  
9 2007) (quoting Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1965  
10 (2007)).

11  
12 **II. The Copyright Claim**

13 HWC's copyright claim against the state defendants is  
14 dependent upon the terms of the 1997 contract. There is no  
15 dispute that DFY copied HWC's materials; the only question is  
16 whether DFY had the right to do so. See Graham v. James, 144  
17 F.3d 229, 236 (2d Cir. 1998) ("A copyright owner who grants a  
18 nonexclusive license to use his copyrighted material waives his  
19 right to sue the licensee for copyright infringement."). "In  
20 interpreting a contract, the intent of the parties governs. A  
21 contract should be construed so as to give full meaning and  
22 effect to all of its provisions." Am. Express Bank Ltd. v.  
23 Uniroyal, Inc., 562 N.Y.S.2d 613, 614 (N.Y. App. Div. 1990)  
24 (citations omitted). The question of whether a provision in an  
25 agreement is ambiguous is a question of law. Collins v.  
26 Harrison-Bode, 303 F.3d 429, 433 (2d Cir. 2002). Under New York  
27 law, the presence or absence of ambiguity is determined by  
28 looking within the four corners of the document, without

1 reference to extrinsic evidence. Kass v. Kass, 696 N.E.2d 174,  
2 180 (N.Y. 1998). "[A]n ambiguity exists where a contract term  
3 could suggest more than one meaning when viewed objectively by a  
4 reasonably intelligent person who has examined the context of the  
5 entire integrated agreement and who is cognizant of the customs,  
6 practices, usages and terminology as generally understood in the  
7 particular trade or business." World Trade Ctr. Props., L.L.C.  
8 v. Hartford Fire Ins. Co., 345 F.3d 154, 184 (2d Cir. 2003)  
9 (internal quotation marks and citation omitted).

10 We must decide whether the 1997 contract is ambiguous as to  
11 the duration of the license granted to copy HWC's materials.  
12 Although both parties contend that the 1997 agreement is  
13 unambiguous on its face, they draw different conclusions as to  
14 the duration of the license. HWC claims that, according to the  
15 1997 contract's "Term of Agreement" provision, DFY's right to  
16 copy its materials ended on August 31, 1997 (120 days after the  
17 agreement commenced). The state defendants, however, contend  
18 that the 1997 contract unambiguously grants DFY a perpetual right  
19 to copy HWC's materials. The district court agreed with the  
20 state defendants. We disagree and conclude that the contract on  
21 its face is ambiguous.

22 The purpose of the 1997 contract is not disputed: HWC agreed  
23 to "update and recertify existing [DFY] Crisis

1 Management/Physical Restraint trainers in the techniques  
2 encompassed in the Handle With Care program." To that end, the  
3 agreement provided that HWC would perform twelve days of training  
4 to DFY trainers. The DFY trainers would then train the rest of  
5 DFY's staff in HWC's methods. Contemplating that the DFY  
6 trainers would need to utilize HWC's materials in training the  
7 rest of the Division staff, the 1997 contract acknowledged that  
8 "[DFY] has the right to reproduce all training materials."

9 HWC's argument that the license to copy its materials  
10 expired after 120 days conflicts with the agreement's purpose.  
11 While the 1997 contract states that the "agreement shall commence  
12 May 1, 1997 and end August 31, 1997," there is nothing in the  
13 contract that expressly indicates that this provision governs the  
14 duration of the license to copy HWC's materials. Indeed, from  
15 the four corners of the agreement, it is not at all certain that  
16 the parties intended that DFY's rights to copy HWC's materials  
17 terminate so quickly. HWC plainly knew that it was training  
18 trainers who, if they were to train the rest of DFY's staff,  
19 would need to copy HWC's materials. The provision allowing use  
20 of HWC's materials is unclear on its face as to whether it was  
21 meant to end with the agreement, or whether it was meant to  
22 continue for a reasonable period of time after the agreement

1 ended to allow for further training of DFY staff.

2 We are equally unpersuaded that the 1997 contract granted a  
3 perpetual license. There is no indication from the contract that  
4 the license to copy HWC's materials was meant to be perpetual.  
5 And under New York law, "[c]ontracts which are vague as to their  
6 duration generally will not be construed to provide for perpetual  
7 performance." Ketcham v. Hall Syndicate, Inc., 236 N.Y.S.2d 206,  
8 214 (N.Y. Sup. Ct. 1962). In the absence of a clear provision,  
9 courts are reluctant to declare a perpetual license as a matter  
10 of law. See Warner-Lambert Pharm. Co. v. John J. Reynolds, Inc.,  
11 178 F. Supp. 655, 661 (S.D.N.Y. 1959), aff'd, 280 F.2d 197 (2d  
12 Cir. 1960) (per curiam). Because the contract here does not  
13 explicitly grant a perpetual license, we do not find that it did  
14 so.

15 After rejecting both parties' arguments and finding no  
16 plausible alternative within the four corners of the document, we  
17 conclude that the 1997 contract is ambiguous as to the duration  
18 of the license. This leaves us two choices. "We may resolve  
19 [the] ambiguity . . . if there is no extrinsic evidence to  
20 support one party's interpretation of the ambiguous language or  
21 if the extrinsic evidence is so one-sided that no reasonable  
22 factfinder could decide contrary to one party's interpretation.

1 Or, we may remand for the trial court to consider and weigh  
2 extrinsic evidence to determine what the parties intended."  
3 Collins, 303 F.3d at 433 (internal quotation marks and citation  
4 omitted). We choose the latter.

5 The extrinsic evidence presently in the record does not  
6 answer the question. HWC points out that when it provided  
7 retraining in 1997, it required each Division trainer to sign a  
8 contract acknowledging that his/her certification expired after  
9 one year. This evidence would support a finding that the license  
10 granted under the 1997 contract was of a more limited duration.  
11 The evidentiary record, however, is incomplete. Because further  
12 fact-finding is necessary, we remand the copyright claim to the  
13 district court for further proceedings consistent with this  
14 opinion.<sup>2</sup>

15  
16 **III. Plaintiffs Have Failed to Define the Proper Market for**  
17 **Antitrust Purposes**

18  
19 HWC claims that OCFS, in cooperation with Cornell, has  
20 conspired to create a monopoly in the market for "training

---

1 <sup>2</sup> Because the district court did not have occasion to reach  
2 the state defendants' Eleventh Amendment immunity defenses, and  
3 because the Eleventh Amendment would not, in any event, bar suit  
4 against OCFS officials and employees sued in their official  
5 capacity for injunctive relief, Henrietta D. v. Bloomberg, 331  
6 F.3d 261, 287 (2d Cir. 2003), we do not need to reach this issue.

1 services to private child care providers located within the State  
2 of New York" by withholding approval of supervised facilities  
3 that do not use the TCI method. HWC alleges that HCC was  
4 complicit in this arrangement because, after HWC trained HCC's  
5 staff in 2001, HWC discovered that one of HCC's training  
6 coordinators "appeared in TCI's training manual and video  
7 illustrating" HWC's proprietary methods.

8 For a monopoly claim "[t]o survive a Rule 12(b)(6) motion to  
9 dismiss, an alleged product market must bear a rational relation  
10 to the methodology courts prescribe to define a market for  
11 antitrust purposes -- analysis of the interchangeability of use  
12 or the cross-elasticity of demand, and it must be plausible."  
13 Todd v. Exxon Corp., 275 F.3d 191, 200 (2d Cir. 2001) (internal  
14 quotation marks and citation omitted). "[T]he reasonable  
15 interchangeability of use or the cross-elasticity of demand  
16 between the product itself and substitutes for it" determine  
17 "[t]he outer boundaries of a product market." Brown Shoe Co. v.  
18 United States, 370 U.S. 294, 325 (1962). Though "market  
19 definition is a deeply fact-intensive inquiry [and] courts  
20 [therefore] hesitate to grant motions to dismiss for failure to  
21 plead a relevant product market," Todd, 275 F.3d at 199-200,  
22 "[w]here the plaintiff fails to define its proposed relevant

1 market with reference to the rule of reasonable  
2 interchangeability and cross-elasticity of demand, or alleges a  
3 proposed relevant market that clearly does not encompass all  
4 interchangeable substitute products even when all factual  
5 inferences are granted in plaintiff's favor, the relevant market  
6 is legally insufficient and a motion to dismiss may be granted,"  
7 Queen City Pizza, Inc. v. Domino's Pizza, Inc., 124 F.3d 430, 436  
8 (3d Cir. 1997). Here we find that plaintiffs' proposed relevant  
9 market does not encompass all interchangeable substitute  
10 products. We therefore affirm the district court's dismissal of  
11 the antitrust claims.

12 HWC contends that the relevant market for our analysis here  
13 is the market for "restraint training services to private child  
14 care providers located within the State of New York." This  
15 definition is too narrow. HWC has failed to show how the market  
16 for restraint training services to child care providers is any  
17 different from the larger market for restraint training services  
18 to other businesses, agencies, and organizations.

19 "Interchangeability implies that one product is roughly  
20 equivalent to another for the use to which it is put. . . ."  
21 Queen City, 124 F.3d at 437 (internal quotation marks and  
22 citation omitted). Plaintiffs do not contest that Handle With

1 Care is marketed to and utilized by various organizations,  
2 institutions, and agencies that are not child care providers.  
3 Indeed, plaintiffs readily admit in their complaint that they  
4 compete for such contracts on a "national and international"  
5 basis. The unifying characteristic of this market is that each  
6 purchaser needs to restrain individuals, not just children.

7 Because "the reasonable interchangeability of use . . .  
8 between the product itself and substitutes for it" determines  
9 "[t]he outer boundaries of a product market," it is apparent that  
10 the proper market here is the larger market for restraint  
11 training services to businesses, agencies, and organizations with  
12 the need to safely restrain individuals of all ages, not the more  
13 limited market for child restraint services. Brown Shoe, 370  
14 U.S. at 325. As the district court noted, the larger market  
15 includes social service agencies, law enforcement agencies,  
16 correctional facilities, educational facilities, and even  
17 airlines.

18 Furthermore, we reject HWC's argument that because private  
19 child care providers in New York must have OCFS approval in order  
20 to operate, and thus that the market is specialized, it stated a  
21 plausible discrete relevant market. The relevant inquiry is not  
22 whether a private child care provider may reasonably use both



1 approved and non-approved OCFS methods interchangeably, but  
2 whether private child care providers in general might use such  
3 products interchangeably. See Queen City, 124 F.3d at 438.  
4 HWC's proposed relevant market "clearly does not encompass all  
5 interchangeable substitute products even when all factual  
6 inferences are granted in plaintiff's favor." Id. at 436. We  
7 thus agree with the district court that the "Plaintiffs have not  
8 offered any theoretically reasonable explanation for restricting  
9 the product market to child care providers that require OCFS  
10 approval, or provided a sufficient factual predicate to support  
11 an inference that OCFS enjoys any substantial market power in the  
12 broader market for restraint services." Plaintiffs' proposed  
13 market is therefore legally insufficient and dismissal of the  
14 antitrust claims was appropriate.<sup>3</sup>

#### 16 CONCLUSION

17 For the foregoing reasons, the judgment below is AFFIRMED as to

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1 <sup>3</sup> HWC argues that the district court exceeded its allowable  
2 discretion in dismissing their antitrust claims with prejudice,  
3 as opposed to allowing HWC to amend their complaint. Given the  
4 nature of the claims, repleading would be futile; HWC offers no  
5 plausible argument as to how the failure to plead a relevant  
6 market could be rectified through an amended complaint. See  
7 Patane v. Clark, 508 F.3d 106, 113 n.6 (2d Cir. 2007) (per  
8 curiam).

1 the antitrust claims and VACATED as to the copyright claim and  
2 the case is REMANDED to the district court for further  
3 proceedings consistent with this opinion.