# EXHIBIT U

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| UNITED STATES OF AMERICA ex rel., GEORGE J. DENONCOURT, Plaintiff, | ) | |
| v. | ) | Civil No. 92-2808 PF |
| STATE OF NEW YORK, et al. Defendants | ) | Filed Under Seal |



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 (NYSDSS), 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

Release, shall be resolved on the terms set forth in that Settlement Agreement and Release;

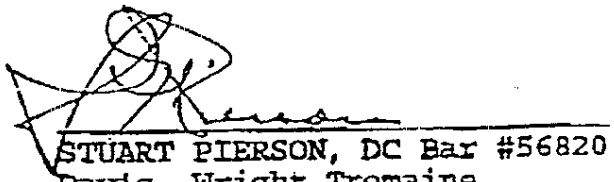
The Court shall have jurisdiction over the parties to enforce the terms of the Settlement Agreement and Release;

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. 10-830
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, 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

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

UNITED STATES DISTRICT JUDGE

SETTLEMENT AGREEMENT AND RELEASE

Parties

This Settlement Agreement and Release ("Agreement") is made this 20th 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 (NYSDSS), 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

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 [illegible]

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

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

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

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

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

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

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

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

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

other HHS 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

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

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" [illegible]

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

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: for Charles Lee

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

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GEORGE DENONCOURT

Dated: _____ By: Stuart Pierson/Alan D Kaufman

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 D 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.

By: _____

JOHN ROBITZEK, ESQ.
Deputy General Counsel
New York State Department of
Social Services
40 North Pearl Street
Albnay, New York 12243-0001
(518) 474-9502

Counsel for the New York State
Department of Social Services

By: _____

JAMES R. DENDEHEY, 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