



FOSTER CHILDREN BRING FEDERAL CLASS ACTION AGAINST NEW YORK CITY AND STATE FOR HARM IN FOSTER CARE

Suit asserts that NYC foster children remain in foster care custody longer than almost anywhere else in the country, and that rate of maltreatment in foster care custody is one of the highest in the country

Elisa W. v. The City of New York, Case No. 1:15-cv-05273, U.S. District Court, Southern District of New York

Ten New York City children who have spent most of their childhood in the foster care system Wednesday brought a federal class action against the city and state for failing to provide them with permanent homes and for exposing them to harm while in foster care at a higher rate than almost any place else in the country.

The lawsuit, known as *Elisa W. v. The City of New York*, names as defendants the city itself; the city agency responsible for child welfare services, The Administration for Children's Services ("ACS"); and its commissioner, Gladys Carrion; the State of New York; the state agency responsible for child welfare, the Office of Family and Children's Services ("OCFC"), and its Acting Commissioner, Sheila J. Poole.

The New York City Public Advocate, using her authority under the City Charter, is also a plaintiff in the lawsuit against the New York City defendants.

The lawsuit alleges that New York City is one of the most dangerous foster care systems in the country, and that the state has one of the highest rates of maltreatment of children in foster care of any foster care system in the country. It also asserts that children remain in state custody in New York City far longer than children elsewhere in New York State and twice as long as children in the rest of the country. According to federal data:

- Children in foster care in New York City spend twice as much time in state custody as children in the rest of New York State, and over double the amount of time in state custody as children in the rest of the nation.



1095 Hardscrabble Rd
Chappaqua NY 10514
844-422-2425

www.ABetterChildhood.org
media@ABetterChildhood.org

- It takes longer to return New York City children in foster care to their parents than in the rest of New York State and the rest of the nation. Federal data for 2013 shows that New York City performs worse on this measure than all but five other states and territories.
- It takes longer for a foster child to be adopted in New York City than anywhere else in the country. New York City has performed worse on this measure than every state since at least 2007.

The suit tells the stories of 10 children, ranging from three to 16, who have spent most of their lives in foster care. Several of these children have been physically harmed while in foster care, all have been emotionally harmed, and none have yet been placed in a permanent home. New York City delegates its day to day responsibilities for the care of children in foster care to agencies with which it contracts, but retains legal responsibility for these children. The lawsuit asserts that the city fails to exercise meaningful oversight of these contract agencies.

- One 16 year old girl, who has grown up in foster care and in more different placements than she can remember, has been both physically and psychologically abused while in foster care. She is now on powerful psychotropic medications that leave her barely able to string a sentence together, although she recalls being a very good student when she was young, and still has hopes of going to college.
- Another plaintiff, a three year old boy removed from his mother, a school teacher, after she reported the boy's father for abusing her, has been in foster care for almost two years, even though his mother expelled her abuser from the house immediately after he was reported for the abuse. At the end of his regular visits with his mother, the little boy cries uncontrollably. The child's therapist has told his mother that he has to "get used to it" because this is "his life now."
- A two and a half year old girl in foster care since birth continues mandatory visits with her mother, although her mother was found to have severely abused two other children, one of whom was killed by the mother's boyfriend. A proceeding to free the child for adoption has been repeatedly delayed in the Family Court.

The lawsuit alleges a wide range of well-documented and long recognized deficiencies in the City's child welfare system. Among them are:

- ACS's failure to exercise meaningful oversight over contract agencies,
- ACS's failure to ensure an adequately staffed and appropriately trained child welfare workforce,
- ACS's failure to develop a placement process that matches children with appropriate placements,
- ACS's failure to ensure that meaningful case plans and service plans for children are developed and implemented, and
- Defendants' failure to ensure timely adjudication of Family Court proceedings, which further impedes timely decision-making for children and their placement in permanent homes.

The lawsuit also asserts that the State Office of Children and Family Services has failed to exercise sufficient oversight over New York City's child welfare system and to take necessary steps to ensure that the city complies with the requirements of federal law.

The result of all these failures is that children continue to be devastated and permanently damaged by their experiences in the New York City foster care system, deprived of parents to whom they could be returned, delayed in their access to adoption when they can't be returned to parents, and deprived for their entire childhood of a chance for a permanent family. According to the lawsuit, every year approximately 1,000 New York City children leave the New York City foster care system with no permanent family and without a connection to an adult they can trust or count on. Many of them wind up homeless.

The lawsuit asks the court to certify the case as a class action on behalf of all New York City foster children and to find that the defendants have violated these children's constitutional, federal and state law rights. It also asks that ACS be barred from placing children with contract agencies which do not meet professional caseload, training, planning and permanency standards, and to provide funding for post permanency services. To oversee the city and the state defendants' compliance with the remedies developed as the result of the lawsuit, the plaintiffs ask the Court to appoint a Special Master.

"Hundreds of millions of public dollars are spent every year on a system that further devastates children who have already suffered the loss of being removed from their homes," said Marcia Robinson Lowry, an attorney for plaintiffs in the lawsuit. "This problem isn't new; it's been documented repeatedly. Yet little gets better for New York City children, and there is an extraordinary lack of urgency about the need to protect them and give them a chance for a decent childhood. That's why we have asked the Court to act. It's clearly their last resort and, history tells us, their only chance."

The child plaintiffs in the lawsuit are represented by Marcia Robinson Lowry, the executive director of A Better Childhood Inc., a nonprofit advocacy organization committed to reforming child welfare systems across the country, and Cravath, Swain and Moore, with a team headed by Julie North, a Member of the firm.

#

A Better Childhood is a national nonprofit advocacy organization that uses the courts to reform dysfunctional child welfare systems around the country. **Marcia Robinson Lowry**, A Better Childhood's executive director, is lead counsel in the *Elisa W. v. The City of New York* lawsuit.



1095 Hardscrabble Rd
Chappaqua NY 10514
844-422-2425

www.ABetterChildhood.org
media@ABetterChildhood.org