

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Circuit Court Case Number 2017-CP-18-02001

Kaci May and Kaci May as guardian
ad litem for A.R.M., J.H.M., J.T.M.,
C.B.M., J.R.M., and J.W.M.,

Appellants,

v.

Dorchester School District Two,
South Carolina Department of Social
Services, Michael Leach, and Jasmine
Flemister.

Respondents,

**RECORD ON APPEAL
VOLUME I**

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Aug 04 2021
SC Court of Appeals

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

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Camden, South Carolina
August 3, 2021

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

FORM 4
ROA 000001

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1802001

Kaci May et al
PLAINTIFF(S)

Dorchester School District Two et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

On July 29, 2019. among other motions, Plaintiff's Motion for Temporary Restraining Order was before the Court. For failure to establish both irreparable harm and an inadequate remedy at law, Plaintiff's motion is hereby denied in its entirety.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/30/2019 .

Kacy May for J.H.M.,J.T.M.,C.M.B.,J.R.M.,J.W.M.,A.R.M
J.W.M. for Kacy May
J.R.M. for Kacy May
C.M.B. for Kacy May
J.T.M. for Kacy May
J.H.M for Kacy May
A.R.M for Kacy May

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ROA 000001

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Dorchester Common Pleas

Case Caption: Kaci May , plaintiff, et al VS Dorchester School District Two ,
defendant, et al

Case Number: 2017CP1802001

Type: Order/Electronic Form 4

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2019-07-30 11:37:05 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

FORM 4
ROA 000004

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1802001

Kaci May, et al.,
PLAINTIFF(S)

Dorchester School District Two, et al.,
DEFENDANT(S)

Submitted by: Robert Butcher

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: On July 29, 2019 the Court heard the Defendants' two motions to dismiss. After careful review of the record and the submitted briefs, the motions are denied, in part and granted, in part. The motion to dismiss filed by the South Carolina Department of Social Services, Susan Alford, and Jasmine Flemister is denied. With regard to the motion to dismiss of the Dorchester School District Two, Wally Baird, and Joseph R. Pye, the Court grants the motion to dismiss as it relates to Dr. Baird and Joseph Pye, based on the argument submitted in Defendant Dorchester School District Two's Memorandum in Reply to Plaintiffs' Opposition to Motion to Dismiss.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

ROA 000004

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Robert J. Butcher

Deborah J. Butcher

ATTORNEY(S) FOR THE PLAINTIFF(S)

William H. Davidson, Kenneth P. Woodington for the
SCDSS Defendants

Thomas Kennedy Barlow, Dwayne Traynor Mazyck, and
Susan Marie Fittipaldi for the School District Defendants

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCp.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[illegible]

ROA 000006

ROA 000006



Dorchester Common Pleas

Case Caption: Kaci May , plaintiff, et al VS Dorchester School District Two ,
defendant, et al
Case Number: 2017CP1802001
Type: Order/Form 4

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2020-03-17 14:20:34 page 4 of 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL CIRCUIT
Case No.: 2017-CP-18-02001

Kaci May, and Kacy May as guardian ad
litem for A.R.M., J.H.M., J.T.M., C.B.M.,
J.R.M., and J.W.M.,

Plaintiffs,

v.

Dorchester School District Two, South
Carolina Department of Social Services,
Susan Alford, and Jasmine Flemister,

Defendants.

ORDER

The Court is advised that Michael Leach has succeeded Susan Alford as State Director of the South Carolina Department of Social Services, who was sued in this action in her official capacity only.

Rule 25(d), S.C. R. Civ. P., provides that “When a public officer is a party to an action in his official capacity and during its pendency . . . ceases to hold office, . . . his successor is automatically substituted as a party.” The same rule provides that “An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.”

All parties have consented to the substitution of Mr. Leach for Ms. Alford in this action.

Therefore, IT IS ORDERED:

Michael Leach, State Director of the South Carolina Department of Social Services is substituted for Susan Alford, and like Ms. Alford, Michael Leach is being sued in his official capacity. The allegations in the complaint that refer to Susan Alford shall refer to Michael Leach

and the filed answers of the Defendant parties, portions which affirm or deny allegations alleged against Susan Alford shall refer to Michael Leach.

AND IT IS SO ORDERED.

Maite Murphy
Circuit Court Judge of the
First Judicial Circuit

Dated: _____
St. George, South Carolina

WE SO MOVE:

THE FOSTER CARE ABUSE LAW FIRM, PA

s/Robert J. Butcher

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Dated: June 24, 2020
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Dorchester Common Pleas

Case Caption: Kaci May , plaintiff, et al VS Dorchester School District Two ,
defendant, et al
Case Number: 2017CP1802001
Type: Order/Substitution of Parties

So Ordered

s/ Maite Murphy 2166

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	
Kaci May and Kacy May as guardian ad	)	
litem for A.R.M., J.H.M., J.T.M.,	)	C.A. No. 2017-CP-18-02001
C.B.M., J.R.M., and J.W.M.,	)	
	)	ORDER
Plaintiff,	)	
	)	
vs.	)	
	)	
Dorchester School District Two, , South	)	
Carolina Department of Social Services,	)	
Michael Leach, and Jasmine Flemister,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court for a bench trial on August 11 and 12, 2020, during which Plaintiff argued generally that she was entitled to permanent injunctive relief prohibiting Defendant South Carolina Department of Social Services (DSS) from interviewing any of her children at any of Defendant Dorchester School District Two (DD2) schools without parental permission, a warrant, or a court order. At the conclusion of Plaintiff's case, Defendants moved for a directed verdict. After careful consideration of the testimony of the witnesses and arguments of all parties and fully reviewing the evidence presented, as set forth more fully below, the Court grants Defendants' motion for a directed verdict.

I. INTRODUCTION AND FINDINGS OF FACT

Plaintiff filed this action seeking both preliminary and permanent orders enjoining DSS from interviewing her children at school and enjoining DD2 from facilitating those interviews unless DSS presented a court order, warrant, subpoena, or a new allegation of abuse or neglect.

In March 2017, DSS received a report of possible child abuse and/or neglect involving the

Plaintiff household.¹ The report was made after Plaintiff Kaci May disclosed in graphic detail during a school meeting, among other things, that one of her children had brutally raped other children in the household. As a result of that report, DSS opened an investigation into the allegations. As part of the investigation, DSS interviewed or attempted to interview the five school-aged children² at Sand Hill Elementary School in DD2 on two occasions in March 2017 and two occasions in May 2017. Plaintiff refused to allow DSS to interview the children in her home.

In May 2017, DSS indicated a case of physical neglect against Kaci May, a determination that she appealed. DSS later filed a Family Court action against Kaci May which was still pending in the fall of the 2017-18 school year. DSS interviewed or attempted to interview some of the children at DD2 schools on two occasions in September and once in November 2017.

DSS did not return to DD2 schools after November 20, 2107, to interview any of the children and has not interviewed or attempted to interview any of the May children at school since November 2017. Eventually, on June 14, 2018, the DSS action and Plaintiff's later filed counterclaim were both voluntarily dismissed.

In seeking an injunction, Plaintiff alleged that the District and DSS violated the federal and state constitutional rights of Plaintiff and her minor children by interviewing and permitting DSS workers to interview the minor children at District schools without a court order, subpoena or exigent circumstances.

II. LEGAL STANDARD

When the Court considers a motion for a directed verdict, the Court must “view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and [must] deny the motion when either the evidence yields more

¹ Plaintiff is the mother of the seven children, four of whom are biological and three adopted. Plaintiff testified that her adopted children were subjected to significant abuse and neglect prior to their adoption which has caused continued and serious negative effects on her family.

² J.W.M. and L.C.M. were only four years old and were not in school.

than one inference or its inference is in doubt.” *Estate of Carr ex rel. Bolton v. Circle S Enters., Inc.*, 379 S.C. 31, 38, 664 S.E.2d 83, 86 (Ct. App. 2008). The Court’s task is to “resolve whether it would be reasonably conceivable to have a verdict for a party opposing the motion under the facts as liberally construed in the opposing party’s favor.” *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006). “The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt.” *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 418 (Ct. App. 2000).

III. LEGAL ANALYSIS

“To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law.” *Ray v. City of Rock Hill*, 428 S.C. 358, 368, 834 S.E.2d 464, 469 (Ct. App. 2019), cert. granted (May 22, 2020). The standard for granting a permanent injunction is the same as that for preliminary relief, except that the court must consider plaintiff’s actual success on the merits rather than her likelihood of success. See *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 546 n. 12 (1987).

“Actions for injunctive relief are equitable in nature.” *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). An injunction is a drastic and “extraordinary equitable remedy courts may use in their discretion in order to prevent irreparable harm to a party” when no adequate remedy exists at law. *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013). Due to its drastic and extraordinary nature, courts should issue injunctions with caution and only where no adequate remedy exists at law. *Id.*

Viewing the testimony and other evidence presented at trial and inferences reasonably drawn therefrom in the light most favorable to Plaintiff, I find that Plaintiff failed to produce evidence supporting any of the three elements required for injunctive relief.

First, Plaintiff did not show irreparable harm that would justify an injunction. Two of the children, CBM and ARM, testified that they were not upset about the meetings or interviews with

DSS. They were not crying and did not observe any of their siblings to be upset or crying. There was no evidence that any of the children's grades suffered or that any of the children were harmed to any extent that would override the need to meet or talk with them regarding the report of abuse or neglect, which was indisputably justified and reasonable in this case. Although Plaintiff Kaci May testified that the children were upset by the interviews with DSS, there was no evidence to support that the children suffered or would suffer harm in the absence of injunctive relief. The children had significant life circumstances and psychological issues that caused stress and upset in their lives outside of the issues raised in this case such that any upset the children may have experienced could not be attributed to the DSS interviews. Further, Plaintiff made no showing that DSS returning to DD2 to interview the children was anything more than speculation or a hypothetical possibility, which is insufficient to support injunctive relief.

Second, Plaintiff did not prove that she would have no adequate remedy at law if DSS returned to DD2 to interview her children. Ms. May testified that she told the children that if DSS ever tried to talk to them, they did not have to answer any questions. The children knew that they did not have to talk with DSS and some exercised this right not to answer questions. ARM and CBM both testified that they knew they did not have to talk to DSS unless they wanted to. Moreover, there is no pending DSS case with the family. The underlying DSS case that formed the basis of this lawsuit was resolved in June 2018. DSS has not attempted to speak with any of the May children since November of 2107. If an entirely speculative future interview is conducted in a tortious or unconstitutional manner, Plaintiff will have adequate remedies at law and equity to address it.

Finally, Plaintiff did not establish a likelihood of success on the merits. S.C. Code Ann. § 63-7-920, *Investigations and case determination*, provides:

C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected

and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child.

The language of the above statute is clear and unambiguous: DSS is permitted by statute to interview children at school. As a corollary, DD2 has no authority to prevent properly credentialed DSS workers or law enforcement from conducting interviews of children on school premises. Where a statute expressly enumerates the requirements on which it is to operate, additional requirements are not to be implied. *Byrd v. Irmo High School*, 321 S.C. 426 (1996), citing, *Trayco, Inc. v. United States*, 994 F.2d 832 (Fed.Cir.1993).

With regard to the underlying constitutional issues, the Fourth Amendment protects against unreasonable searches and seizures. *United States v. Place*, 462 U.S. 696 (1983). While the Fourth Circuit has held that the Fourth Amendment applies to social workers involved in child abuse investigations, “investigative home visits by social workers are not subject to the same scrutiny as searches in the criminal context.” *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir.1993). Further, the Fourth Circuit has held that the state “has a legitimate interest in protecting children from neglect and abuse and in investigating situations that may give rise to such neglect and abuse. *Martin v. St. Mary's Dep't of Social Services*, 346 F.3d 503, 506 (4th Cir.2003).

The Supreme Court has never held that a social worker's warrantless in-school interview

of a child pursuant to a child abuse investigation violates the Fourth Amendment. See *Camreta v. Greene*, 563 U.S. 692, 713–14 (2011). Thus, any suggestion that DD2 or DSS somehow “seized” or violated plaintiff’s constitutional rights by summoning the children and asking limited, basic questions for a limited amount of time is unsupported by the law.

Plaintiff failed to show that DSS or DD2 acted unreasonably by interviewing or permitting interviews, respectively, at school. Based on the largely undisputed testimony, I find that the DSS interviews were both reasonable in inception and scope based on the report to DSS and Plaintiff’s refusal to allow DSS to interview the children in the home. No legal authority supports a claim on the merits against DD2 or DSS under the facts of this case.

IV. CONCLUSION

For the foregoing reasons, Defendants’ Motion for a Directed Verdict is GRANTED.

IT IS SO ORDERED.

The Honorable Maite Murphy

September __, 2020

Columbia, South Carolina



Dorchester Common Pleas

Case Caption: Kaci May , plaintiff, et al VS Dorchester School District Two ,
defendant, et al

Case Number: 2017CP1802001

Type: Order/Other

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2020-09-18 14:34:32 page 7 of 7

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Kaci May, and Kacy May as guardian ad
litem for A.R.M., J.H.M., J.T.M., C.B.M.,
J.R.M., and J.W.M.,

Plaintiffs,

v.

Dorchester School District Two, Wally
Baird, Joseph R. Pye, South Carolina
Department of Social Services, Susan
Alford, and Jasmine Flemister,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL CIRCUIT

Case No.: 2017-CP-18- 2001

COMPLAINT

(Injunctive Relief Requested)

CERTIFIED COPY
 2017 DEC -7 PM 4:28
 Clerk of Court
 Dorchester County

Plaintiffs, complaining of Defendants, allege the following:

I. Parties and Jurisdiction.

1. Plaintiff Kaci May resides in Ridgeville in Dorchester County, South Carolina.
2. Plaintiff Kaci May is the mother of seven children, A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., J.W.M., L.C.M., and brings this lawsuit on their behalf. A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M. are collectively referred to as "Plaintiff Children"
3. Defendant Dorchester School District Two, hereinafter "Defendant" or "District", is a governmental entity organized and existing under the laws of the State of South Carolina, and operates public schools including Sand Hill Elementary School and Gregg Middle School.

4. Defendant Wally Baird is the principal of Sand Hill Elementary School and, at this time, is sued in his official capacity.

5. Defendant Joseph R. Pye is the superintendent of Dorchester School District Two and is sued in his official capacity.

6. Defendants Dorchester School District Two, Wally Baird, and Joseph R. Pye are collectively referred to as the "School District Defendants".

7. South Carolina Department of Social Services, hereinafter "SCDSS", is an agency of the State of South Carolina created by the General Assembly of the State of South Carolina.

8. Susan Alford is the Director of the South Carolina Department of Social Services and is sued in her official capacity.

9. Jasmine Flemister is a caseworker for the South Carolina Department of Social Services and is sued in her official capacity.

10. Defendants SCDSS, Susan Alford, and Jasmine Flemister are collectively referred to as "SCDSS Defendants".

II. General Allegations.

11. Plaintiffs incorporate paragraphs 1-10 as if stated herein verbatim.

12. That SCDSS is the agency established by the State of South Carolina to investigate reports of suspected child abuse and neglect; provide necessary services to children and families to protect children who are the subject of such reports, including placing children into out-of-home custody; provide proper care to abused and neglected children who are receiving services; ensure the safety and well-being of such children;

protect such children from further maltreatment; and secure permanent placements for such children including foster homes and adoption.

13. That the SCDSS is charged by the South Carolina General Assembly in Title 63, The Children's Code, to "have a responsibility to implement prevention programs aimed at identifying high risk families and to provide supportive intervention and to reduce occurrence of maltreatment." S.C. Code Ann. § 63-7-10(3). SCDSS is also responsible to provide "[s]ervices for families [that] should be accessible and designed to encourage and enable families to adequately deal with their problems within their own family system." S.C. Code Ann. § 63-7-10(4). The Children's Code specifically states that, "[a]ll child welfare intervention by the State has as its primary goal the welfare and safety of the child." S.C. Code Ann. § 63-7-10(4). SCDSS is required by the Children's Code to take "[a] family assessment approach, stressing the safety of the child, building on the strengths of the family, and identifying and treating the family's needs is the appropriate approach for cases not requiring law enforcement involvement or the removal of the child." S.C. Code Ann. § 63-7-10(10).

14. That SCDSS must consider whether the home of the prospective adoptive parent is a suitable one for the placement of a child. S.C. Code Ann. § 63-9-520.

15. That SCDSS is required to inform prospective foster parents of the background and abuse history of children placed in their care. S.C. Code Ann. §§ 63-7-1990, 63-7-2320, 63-7-2370

16. That SCDSS shall continually evaluate its staffing, functions, policies, and practices on the basis of nationally recognized standards. S.C. Code Ann. § 63-9-1330.

17. That SCDSS was responsible for ensuring that children are properly matched in an appropriate, safe, and nurturing foster or adoptive home with an appropriate family. For instance, a child who sexually acts out on other children should not be placed with children who are the same age, vulnerable, or who are younger. A child who has extraordinary medical needs should only be placed with foster or adoptive parents who are trained to take care of those particular medical needs

18. That Plaintiffs J.H.M., J.R.M., and L.C.M. are a sibling group that were adopted by Kaci May and her husband on June 5, 2015. A.R.M., J.T.M., C.B.M., and J.W.M. are the biological children of Kaci May and her husband.

19. That the father of the children, Warren May, is currently deployed overseas by the United States Navy.

20. The Plaintiff children are zoned for Dorchester School District Two. J.H.M. and J.R.M. are currently placed in residential treatment, but would otherwise attend Sand Hills Elementary School.

21. That well before their adoption, J.H.M., J.R.M., and L.C.M. were sexually abused by their biological family, and later, while under the control and in the custody of Defendant SCDSS from March 14, 2013 through November 8, 2013.

22. That SCDSS failed to provide treatment to these children.

23. That Kaci May informed the School District Defendants that due to her prior sexual abuse, J.H.M., age 10, is sexually reactive and that she openly masturbates. These behavioral and psychological issues are a function of J.H.M.'s prior sexual abuse.

24. That the School District Defendants failed to supervise J.H.M. at school. This endangered both J.H.M. and her peers.

25. That after attending a heated individualized education plan meeting for J.H.M. with the School District Defendants, the School District Defendants retaliated against Kaci May and reported her for child sexual abuse on March 28, 2017.

26. That SCDSS investigated the complaint and concluded its investigation on May 22, 2017. That SCDSS made an administrative finding of physical neglect against Plaintiff Kaci May and Warren May.

27. This administrative finding was appealed by Plaintiff Kaci May and Warren May pursuant to S.C. Code Ann. §§ 63-7-1410-1440 on June 7, 2017.

28. That SCDSS does have a policy and practice to not follow the due process remedies that the South Carolina General Assembly has enacted. That on June 23, 2017 SCDSS stayed the appeal and stated that it would file an action in family court.

29. That SCDSS did not file an action in family court until September 14, 2017.

30. That there is a public policy that South Carolina public schools allow SCDSS caseworkers to visit with children when there are complaints of abuse and neglect.

31. That even when there are no complaints of abuse and neglect, South Carolina public schools allow SCDSS caseworkers to interrogate children without noticing their parents, without providing children with counsel, without advising children of their rights, and without informing the parents of these children afterwards.

32. That in particular, Dorchester School District Two has allowed SCDSS to interrogate Plaintiffs A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., at school without noticing their parents, without providing children with counsel, without advising

children of their rights, and without informing the parents of these children afterwards.

This includes Sand Hills Elementary School School and Gregg Middle School.

33. That these actions are in violation of the First, Fourth, Fifth, Sixth and Fourteenth Amendment Rights of the United States Constitution for all Plaintiffs.

34. That these actions are in violation of §§ 3, 10, 12, and 22 of the South Carolina Constitution for all Plaintiffs.

35. That Plaintiffs sent a letter to Defendants on October 16, 2017 demanding that they stop interrogating the children.

36. That on November 20, 2017, Jasmine Flemister, a SCDSS employee, interrogated Plaintiffs A.R.M., C.B.M., and J.W.M., at school and the School District Defendants facilitated the interrogation despite Plaintiffs' express demands to not allow the interrogation of the children barring a new complaint of abuse and neglect.

37. That Plaintiffs seek injunctive relief on behalf of Plaintiffs and all similarly situated persons throughout the State of South Carolina.

38. That the unconstitutional actions of Defendants occur daily throughout our state and even Plaintiffs' claims become moot, there is not just a strong likelihood of repetition, there is a certainty of repetition.

FOR A FIRST CAUSE OF ACTION
(42 U.S.C. § 1983 – Injunctive Relief – School Interrogations)

39. Plaintiffs incorporate paragraphs 1-38 as if stated herein verbatim.

40. That the SCDSS Defendants have and continue to interrogate Plaintiffs A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M. despite the fact that there is no new allegation of abuse and neglect and despite the fact that there is no probable cause or court order allowing the seizure and interrogation of the Plaintiff Children.

41. That the School District Defendants facilitate the interrogations of Plaintiffs A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., despite the fact that there is no new allegation of abuse and neglect and despite the fact that there is no probable cause or court order allowing the seizure and interrogation of the Plaintiff Children.

42. That these interrogations are in violation of the First, Fourth, Fifth, Sixth, and Fourteenth Amendment Rights of the United States Constitution.

43. That these interrogations of children occur without noticing the children's parents, without providing children counsel, without advising children of their rights, and without informing the parents of these children afterwards.

44. That this violation of Plaintiffs' constitutional rights by the SCDSS Defendants and the School District Defendants can be remedied by an Order of this Court restraining the SCDSS Defendants and the School District Defendants from interrogating the Plaintiff children unless there is a court order and or a new complaint of abuse and or neglect.

45. Plaintiffs have been harmed and the sanctity and privacy of the family has been injured by Defendants.

46. These actions by the Defendants occur daily throughout our state and even Plaintiffs' claims become moot, there is not just a strong likelihood of repetition, there is a certainty of repetition

47. Plaintiffs ask the Court to issue such an Order and to make the order applicable to similarly situated children and parents in this state.

48. Plaintiffs seek attorney's fees and costs.

FOR A SECOND CAUSE OF ACTION
(South Carolina Constitution – Injunctive Relief – School Interrogations)

49. Plaintiffs incorporate paragraphs 1-48 as if stated herein verbatim.

50. That the SCDSS Defendants have and continue to interrogate Plaintiffs A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., despite the fact that there is no new allegation of abuse and neglect and despite the fact that there is no probable cause or court order allowing the seizure and interrogation of the Plaintiff Children.

51. That the School District Defendants facilitate the interrogations of Plaintiffs A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., despite the fact that there is no new allegation of abuse and neglect and despite the fact that there is no probable cause or court order allowing the seizure and interrogation of the Plaintiff Children.

52. That these interrogations are in violation of §§ 3, 10, and 12 of the South Carolina Constitution.

53. That these interrogations of children occur without noticing the children's parents, without providing children counsel, without advising children of their rights, and without informing the parents of these children afterwards.

54. That this violation of Plaintiffs' constitutional rights by the SCDSS Defendants and the School District Defendants can be remedied by an Order of this Court restraining the SCDSS Defendants and the School District Defendants from interrogating the Plaintiff children unless there is a court order and or a new complaint of abuse and or neglect.

55. Plaintiffs have been harmed and the sanctity and privacy of the family has been injured by Defendants.

56. These actions by the Defendants occur daily throughout our state and even Plaintiffs' claims become moot, there is not just a strong likelihood of repetition, there is a certainty of repetition.

57. Plaintiffs ask the Court to issue such an order and to make the order applicable to similarly situated children and parents in this state.

58. Plaintiffs seek attorney's fees and costs.

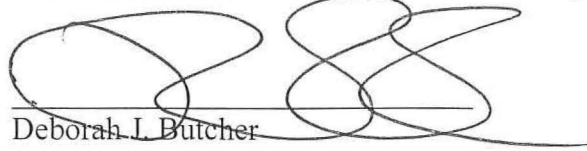
WHEREFORE, Plaintiffs seek:

- A) A temporary Order restraining the SCDSS Defendants from interrogating the Plaintiff Children unless there is a Court Order or a new allegation of abuse and/or neglect;
- B) A temporary Order restraining the School District Defendants from facilitating the interrogation of the Plaintiff Children unless there is a Court Order or a new allegation of abuse and/or neglect;
- C) A permanent and final Order restraining the SCDSS Defendants from interrogating the Plaintiff Children unless there is a Court Order or a new allegation of abuse and/or neglect;
- D) A permanent and final Order restraining the School District Defendants from facilitating the interrogation of the Plaintiff Children unless there is a Court Order or a new allegation of abuse and/or neglect;
- E) Attorneys fees and costs; and
- F) Any other relief the Court may consider.

Respectfully Submitted,

PA

THE FOSTER CARE ABUSE LAW FIRM,

A handwritten signature in black ink, appearing to read 'Deborah L. Butcher', written over a horizontal line.

Deborah L. Butcher

S.C. Bar No. 74029

Fed. Bar No. 1073

Robert J. Butcher

S.C. Bar No. 74722

Fed. Bar No. 9767

The Foster Care Abuse Law Firm, PA

P.O. Box 486

Manning, South Carolina 29102

Telephone: (803) 432-7599

Facsimile: (803) 432-7499

[dbutcher@camdensc-law.com](mailto:d butcher@camdensc-law.com)

[rbutcher@camdensc-law.com](mailto:r butcher@camdensc-law.com)

Attorneys for Plaintiffs

Dated: December 7, 2017

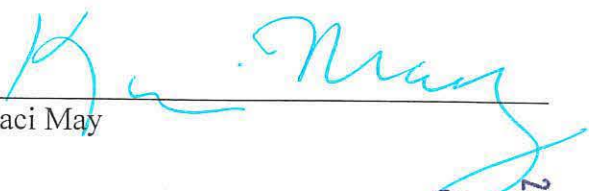
Manning, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

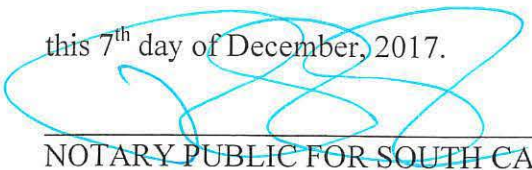
VERIFICATION

PERSONALLY appeared before me Kaci May who, being duly sworn, says that she is the plaintiff and the guardian ad litem for the remaining plaintiffs herein, that she has read the foregoing complaint and motion for a temporary restraining order and injunction, and that she knows of her own knowledge that the allegations contained therein are true, except so much thereof as is alleged upon information and belief, and as to them she believes them to be true.


Kaci May

SWORN TO and subscribed before me

this 7th day of December, 2017.


NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires

6.20.23


CLERK OF COURT
DORCHESTER COUNTY

2017 DEC - 7 PM 4:28

CERTIFIED COPY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Kaci May, and Kacy May as guardian ad
litem for A.R.M., J.H.M., J.T.M., C.B.M.,
J.R.M., and J.W.M.,

Plaintiffs,

v.

Dorchester School District Two, Wally Baird,
Joseph R. Pye, South Carolina Department of
Social Services, Susan Alford, and Jasmine
Flemister,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL CIRCUIT

Case No.: 2017-CP-18- 2001

**NOTICE OF MOTION AND MOTION
FOR A TEMPORARY RESTRAINING
ORDER**

(Injunctive Relief Requested)

CERTIFIED COPY
2017 DEC -7 PM 4:29
Clerk of Court
DORCHESTER COUNTY

NOTICE OF MOTION

Please take notice that pursuant to Rule 65, SCRPC, Plaintiffs will ask for a temporary restraining order based upon the relief requested below and in the attached complaint at the Dorchester County Courthouse, 5200 E. Jim Bilton Boulevard, St. George, South Carolina 29477 on _____ December, 2017 at ____:____ o'clock ____m.

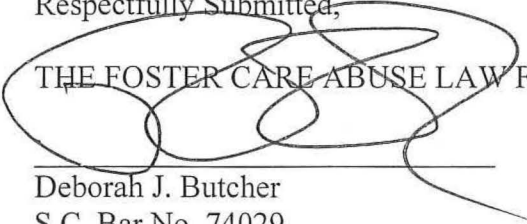
MOTION

Plaintiffs ask the Court to issue a temporary restraining order pursuant to Rule 65, SCRPC based upon the verified allegations in attached complaint. Plaintiffs ask for the following temporary relief:

- A) A temporary order restraining the SCDSS Defendants from interrogating the Plaintiff Children unless there is a Court Order or a new allegation of abuse and/or neglect;

- B) A temporary order restraining the School District Defendants from facilitating the interrogation of the Plaintiff Children unless there is a Court Order or a new allegation of abuse and/or neglect;
- C) Attorneys fees and costs; and
- D) Any other relief the Court may consider.

Respectfully Submitted,


THE FOSTER CARE ABUSE LAW FIRM, PA

Deborah J. Butcher

S.C. Bar No. 74029

Fed. Bar No. 1073

Robert J. Butcher

S.C. Bar No. 74722

Fed. Bar No. 9767

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Telephone: (803) 432-7599

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dbutcher@camdensc-law.com

rbutcher@camdensc-law.com

Attorneys for Plaintiffs

Dated: December 7, 2017
Manning, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

FILED-RECORDED
2018 JAN -8 11:11:05

COURT OF COMMON PLEAS

SHIRLEY GRAHAM
CLERK OF COURT
DORCHESTER COUNTYKaci May, and Kacy May, as guardian
ad litem for A.R.M., J.H.M., J.T.M.,
C.B.M., J.R.M., and J.W.M.,

Civil Action No. 2017-CP-18-02001

Plaintiff,

MOTION TO DISMISS

v.

**(Defendants South Carolina Department of
Social Services, Susan Alford, and Jasmine
Flemister)**Dorchester School District Two, Wally
Baird, Joseph R. Pyre, South Carolina
Department of Social Services, Susan
Alford, and Jasmine Flemister,

Defendants.

TO: DEBORAH J. BUTCHER and ROBERT J. BUTCHER, ESQUIRE, ATTORNEYS FOR
PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants South Carolina Department of Social Services, Susan Alford, and Jasmine Flemister hereby move to dismiss this action pursuant to Rules 12(b)(1),(6) and (8), as more fully described below, before the Presiding Judge of the 1st Judicial Circuit at the Dorchester County Courthouse, St. George, South Carolina, on the tenth (10th) day after service hereof at 10:00 a.m. or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an Order granting:

a. This action should be dismissed pursuant to Rule 12(b)(8) because another action is pending between the same parties for the same claim. Specifically, there is a case in the Dorchester County Family Court, 2017-DR-18-1334, *DSS v. Kaci May and Warren May*, in which the Plaintiff in the present case, Kaci May, has filed a counterclaim. See, Exhibit "A".

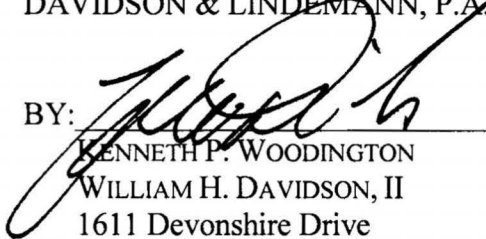
That counterclaim seeks, among other things, an order restraining SCDSS caseworkers from speaking with the Mays about legal issues in this matter. In addition, and in connection therewith, Plaintiff Kaci May has filed a motion in that Family Court action seeking, among other things, "[a]n order restraining SCDSS from interrogating Defendants' children at school." Redacted copies of the Mays' Answer and Counterclaim and the above-referenced motion are attached hereto. *See*, Exhibit "B". The relief sought in that case is the same as in the present case, which seeks temporary and permanent Orders "restraining the SCDSS Defendants from interrogating the Plaintiff Children unless there is a Court Order or a new allegation of abuse and/or neglect." Complaint, Prayer for Relief, Paragraphs (A), (B) and (C).

b. In addition, this Court lacks subject matter jurisdiction over the issues raised in the Complaint herein, because the issues raised in this case pertain to child abuse and neglect proceedings which, pursuant to S.C. Code Ann. §63-7-1610(A), are within the exclusive jurisdiction of the Family Court.

c. In addition, the Complaint fails to state facts sufficient to constitute a cause of action, because there is no legal authority prohibiting DDS from interrogating children who may be victims or witnesses in child abuse and neglect cases. S.C. Code Ann. §63-7-920(C),

Said Motion is based upon the pleadings filed in this case, rules of Court, and such other matters as may be properly presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY: 

KENNETH P. WOODINGTON #6213

WILLIAM H. DAVIDSON, II #1558

1611 Devonshire Drive

Post Office Box 8568

Columbia, South Carolina 29202

(803) 806-8222

Email: kwoodington@dml-law.com

Email: wdavidson@dml-law.com

*Counsel for Defendants South Carolina Department
of Social Services, Susan Alford, and Jasmine
Flemister*

Columbia, South Carolina

January __, 2018

EXHIBIT A

FILED-RECORDED
2018 FEB 20 PM 3:11
DORCHESTER COUNTY
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

South Carolina Department of Social
Services,

Plaintiff,

v.

Kaci May and Warren May,

Defendants,

In the interest of:



Minors under the age of 18.

IN THE FAMILY COURT OF THE

NINTH JUDICIAL CIRCUIT

Case No.: 2017-DR-18-01334

ANSWER AND COUNTERCLAIMS

FILED-RECORDED
2018 FEB 20 PM 3:11
CHERYL CRANFORD
CLERK OF COURT
DORCHESTER COUNTY

Defendants answer the complaint of SCDSS and assert the following:

1. Plaintiff has listed the wrong dates of birth for some of the children in the caption. They have been corrected in this caption.
2. Defendants admit the allegations of paragraph 1.
3. Defendants admit the allegations of paragraph 2.
4. Defendants deny the allegations of paragraph 3 in that the minor children were abused or neglected and demand strict proof thereof. Defendant's further deny the allegations of 3a, 3d as stated, 3e, 3f, and demand strict proof thereof.
5. Defendants admit the allegations of paragraph 3b.
6. Defendants admit the allegations of paragraph 3c.
7. Defendants admit the allegations in paragraph 3g in that they appealed Plaintiff's decision to indicate a case against them for neglect and abuse of their minor children.

Defendants do not have enough information to admit or deny exactly what the County Director did or did not do.

8. Defendants admit the allegations of paragraph 4.
9. Defendants deny the allegations of paragraph 5 and demand strict proof thereof.
10. Defendants object to the allegations of paragraph 6 as stated in that the allegation is nonspecific as to what the children's mental and/or physical condition may be. Therefor Defendants would deny the same and move to strike..
11. Defendants object to the allegations of paragraph 7 as stated in that the allegation is nonspecific as to what harm the children are likely to suffer. Therefor Defendants would deny the same and move to strike..
12. Defendants object to the allegations of paragraph 8 as stated in that the allegation is nonspecific as to what steps will be taken to minimize harm as a result of the removal of the children. Therefor Defendants would deny the same and move to strike..
13. Defendants deny the allegations of paragraph 9 and demand strict proof thereof.
14. Defendants deny the allegations of paragraph 10 and demand strict proof thereof.
15. Defendants deny the allegations of paragraph 11 and demand strict proof thereof.
16. Defendants deny the allegations of paragraph 12 and demand strict proof thereof.
17. Defendants admit the allegations of paragraph 13 in so much as this Court has jurisdiction of the parties and subject matter of this action but is without information to admit or deny that these allegations are properly before the Court pursuant to S.C. Code section 63-7-1660 and therefor would deny the same.

COUNTERCLAIMS

A. PARTIES AND JURISDICTION

18. Defendants incorporate paragraphs 1-17 as if restated herein verbatim.

19. Defendants Kaci May and Warren May are citizens and resident of Dorchester County in the State of South Carolina.
20. Plaintiff South Carolina Department of Social Services (SCDSS) is an agency of the State of South Carolina created by the General Assembly of the State of South Carolina. SCDSS is mandated to investigate reports of suspected child abuse and neglect; provide necessary services to children and families to protect children who are the subject of such reports, including, (1) placement of children into out-of-home custody; (2) the provision of proper care to abused and neglected children who are receiving services; (3) the protection of the safety and well-being of such children; (4) the protection of such children from further maltreatment; (5) securing permanent placements for such children; and (6) the provision of post-adoption services.
21. [REDACTED], DOB [REDACTED], [REDACTED], DOB [REDACTED] and [REDACTED], DOB [REDACTED], were placed in foster care with the May Family on or about November 8, 2013. They remained with the May Family until their adoption by the May's in 2015. [REDACTED] is diagnosed with ADHD. [REDACTED] hasn't received any diagnosis at this time. [REDACTED] is diagnosed with PTSD due to sexual abuse.
22. [REDACTED], DOB [REDACTED], [REDACTED], DOB [REDACTED], [REDACTED], DOB [REDACTED], and [REDACTED] DOB [REDACTED] are the biological children of Defendants Kaci May and Warren May.
23. The Dorchester County Family Court has jurisdiction over this matter pursuant to S.C. Code Ann. §§ 63-7-30, 63-7-1610, 63-7-1640, 63-7-1650, 63-7-1660, 63-7-1670, and 63-7-740. Venue is in Dorchester County pursuant to S.C. Code Ann. § 63-7-1610.

B. BACKGROUND

24. Defendants incorporate paragraphs 1-23 as if restated herein verbatim.
25. The purpose of this detailed complaint is to show that the Defendants have provided for the safety and well being of all of their children during the past three years.
26. Before coming into placement and adoption of the May Family, [REDACTED] was sexually abused by her biological father and possibly his biological brother.
27. The extent to which [REDACTED] was sexually abused by her biological father, was not disclosed to the May's by SCDSS.
28. On October 13, 2017 [REDACTED] disclosed that he was sexually abused by his biological father before the time he came into the care and custody of SCDSS and well before he was adopted by the Mays.
29. From 2014-2017, Warren May and Kaci May began noticing inappropriate and violent behaviors towards animals in [REDACTED] which worsened over time.
30. In May 2017 [REDACTED] admitted to killing chickens, lizards, and frogs.
31. During 2015, the May's repeatedly asked for sexual trauma therapy and the assistance of SCDSS Post Adoptions for [REDACTED]. SCDSS refused to assist them.
32. [REDACTED] and [REDACTED] were placed by the Mays at Three Rivers Residential Treatment Facility on October 13, 2017 for intensive therapy and psychiatric treatment due to the children's severe pre-adoptive abuse history, subsequent behavioral issues, and subsequent psychiatric/psychological issues.
33. During 2014-2015, all of the May's biological and adoptive children disclosed that [REDACTED] had sexually assaulted them while in the playhouse.
34. SCDSS was aware of these sexual assaults yet did not remove [REDACTED] and allowed the adoption to go through. At the time the Mays did not understand the extent of [REDACTED] issues.

35. Upon learning of the disclosures, the May's changed house rules and no longer allowed the children to play in the playhouse and [REDACTED] was moved into a bedroom of her own. [REDACTED] is not allowed to play with or be alone with the other children unsupervised. Cameras were installed and alarms were placed on the door in order to protect the children in the home.
36. During 2014-2015 [REDACTED] received therapy from the National Trauma Victims at MUSC.
37. [REDACTED] openly discloses that she has sexually assaulted her biological and adoptive siblings.
38. [REDACTED] openly discloses that she masturbates at home and at school.

**C. SCDSS SHOULD BE HELD ACCOUNTABLE FOR ABUSING AND
NEGLECTING THE MAY CHILDREN.**

39. Defendants incorporate paragraphs 1-38 as if restated herein verbatim.
40. SCDSS was charged by the South Carolina General Assembly in Title 63, The Children's Code, with "...a responsibility to implement prevention programs aimed at identifying high risk families and to provide supportive intervention and to reduce occurrence of maltreatment." S.C. Code Ann. § 63-7-10(3). SCDSS is also responsible to provide "[s]ervices for families [that] should be accessible and designed to encourage and enable families to adequately deal with their problems within their own family system." S.C. Code Ann. § 63-7-10(4). The Children's Code specifically states that, "[a]ll child welfare intervention by the State has as its primary goal the welfare and safety of the child." S.C. Code Ann. § 63-7-10(4). SCDSS is required by the Children's Code to take "[a] family assessment approach, stressing the safety of the child, building on the strengths of the family, and identifying and treating the family's needs is the appropriate approach for cases not requiring law enforcement involvement or the removal of the child." S.C. Code

Ann. § 63-7-10(10). "Should removal of a child become necessary, the state's foster care system must be prepared to provide timely and appropriate placements for children with relatives or in licensed foster care settings and to establish a plan which reflects a commitment by the State to achieving permanency for the child within reasonable timelines." S.C. Code Ann. § 63-7-10(12).

41. SCDSS was aware of the sexual issues of the adopted May children prior to allowing the Mays to adopt these children into their family yet failed to fully disclose this abuse to the Mays.
42. Plaintiffs were further aware that the Mays were not equipped or qualified to handle sexually reactive children.
43. Plaintiffs were further aware at the time of the adoption that [REDACTED] had not been properly treated for the sexual abuse she endured by her biological father not had a therapist released [REDACTED] to be placed with other minor children.
44. Plaintiffs were further aware that the May home lacked sufficient bedrooms to accommodate a sexually reactive child.
45. Any sexual reactive behavior that [REDACTED] has demonstrated, in the May home, was not generated from the May home but was present at the time she was adopted by the Mays. SCDSS held this knowledge from the Mays, kept the information from the Mays, and created an environment that placed all seven of the May children at risk.
46. Since the time of the adoption the Mays have had to learn how to protect [REDACTED] from herself as well as protecting the other children in the May home from [REDACTED].
47. Since the time of the adoption the Mays have equipped their home with alarms and cameras to keep the children safe.

48. Since the time of the adoption the Mays have added additional bedrooms in order to keep the children safe.
49. The Mays have sought help from SCDSS only to be offered nothing or a level of treatment that does not fit the needs of a child with severe issues such as those that [REDACTED] suffers from.
50. The Mays have sought and located a sexual trauma therapist who has assessed the children, sought and received placement of both [REDACTED] and [REDACTED] into residential care at Three Rivers Residential Treatment Facility.
51. Despite SCDSS's failure to protect these children, the Mays have protected all of the children.
52. The Mays have just recently learned upon information and belief that SCDSS was aware that [REDACTED] was also sexually abused prior to being placed in her home, yet SCDSS did not disclose this information or treat [REDACTED] for the trauma he endured. The Mays are currently addressing his needs.

D. ADDITIONAL RELIEF

53. Defendants further ask the Court to issue an order finding that SCDSS's policy of threatening the use of process against parents of adopted children who seek assistance of the agency through S.C. Code Ann. § 63-7-10 et seq. is in violation of the statute and causes harm to children and families.

WHEREFORE, Defendants respectfully ask the Court:

- A. Deny SCDSS's requested relief and dismiss this action or in the alternative;
- B. Appoint a guardian ad litem pursuant to S.C. Code Ann. §63-7-1620.
- C. Regarding [REDACTED]:

1. That she was sexually abused and did not receive appropriate medical treatment in the custody of SCDSS prior to being adopted by the Mays and the agency presented a serious threat of harm to the May children by placing [REDACTED] in the home without warning the May family of [REDACTED] issues;
- D. Regarding [REDACTED]:
 1. That he was sexually abused and did not receive appropriate medical treatment in the custody of SCDSS prior to being adopted by the Mays and the agency presented a serious threat of harm to the May children by placing [REDACTED] in the home without warning the May family of [REDACTED]'s issues.
- E. Harassment and threats by SCDSS:
 1. Issue an order restraining SCDSS from harassing Defendants Kaci and Warren May and the children in the May's home.
 2. Issue an order restraining SCDSS caseworkers from speaking with the May's about legal issues in this matter.
- F. Issue an order finding that SCDSS's policy of threatening the use of process against parents of adopted children who seek assistance of the agency through S.C. Code Ann. §§ 63-7-10 et seq. is in violation of the statute and causes harm to children and families.
- G. Any and all other relief that this Court believes is equitable and just.

Respectfully submitted,

THE FOSTER CARE ABUSE LAW FIRM, P.A.



Robert J. Butcher
S.C. Bar Number 74722
Deborah J. Butcher
S.C. Bar Number 72409
221 Glenwood Drive
Manning, South Carolina 29102
Post Office Box 486
Manning, South Carolina 29102
Telephone: 803-432-7599
Facsimile: 803-432-7466
Email: rbutcher@camdensc-law.com
Email: dbutcher@camdensc-law.com

Manning, South Carolina
October 16, 2017

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

South Carolina Department of Social
Department,

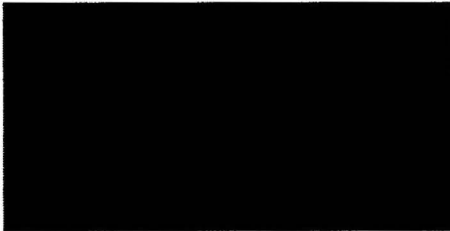
Plaintiff,

v.

Kaci and Warren May

Defendants.

In the Interest of:



Minors under the age of eighteen (18) years of
age.

IN THE FAMILY COURT OF THE
FIRST JUDICIAL CIRCUIT

Case No.: 2017-DR-18-01334

CERTIFICATE OF SERVICE

FILED-RECORDED
2018 FEB 20 PM 3:11
DIRECT GRAY
CLERK OF COURT
DORCHESTER COUNTY

The undersigned does hereby certify that she is paralegal to the attorney for the Plaintiff
in the above stated case; that she has this 17TH day of October 2017 served the following:

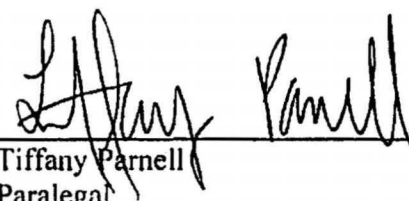
- 1-Answer and Counterclaim
- 2-Certificate of Service

The same was emailed to Mary Lee Briggs at marylee@briggsandinglese.com and mailed
to Deanne Gray by depositing same in an authorized United States mailbox; that the envelope
containing said document was properly addressed, securely wrapped and sealed, and bore the
proper postage; and the said envelope was addressed to the following:

Deanne M. Gray
216 Orangeburg Rd
Summerville SC 29483

Mary Lee Briggs

marylee@briggsandinglese.com



Tiffany Parnell
Paralegal
Post Office Box 486
Manning, South Carolina 29102

EXHIBIT B

FILED-RECORDED
2018 FEB 20 PM 3:11
DEPUTY CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

South Carolina Department of Social
Services,

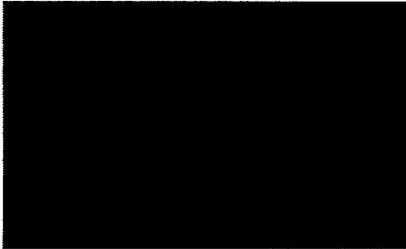
Plaintiff,

v.

Kaci May and Warren May,

Defendants,

In the interest of:



Minors under the age of 18.

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT

Case No.: 2017-DR-18-01334

**NOTICE OF MOTION AND
MOTIONS**

FILED-RECORDED F1B

2-20-18

Cheryl Graham
Clerk of Court
Dorchester County

TO: PLAINTIFF SCDSS AND ITS COUNSEL, DEANNE M. GRAY:

NOTICE

YOU WILL PLEASE TAKE NOTICE that on October 12, 2017 at 1:30 p.m. at the
Dorchester County Family Court, 212 Deming Way, Summerville, South Carolina, Defendants
request the following relief.

MOTION

Plaintiff seeks an Order of the Court granting the following relief:

- A. An order unsealing all SCDSS files and the adoption records of [REDACTED],
[REDACTED] and [REDACTED] pursuant to S.C. Code Ann. § 63-9-780 for use in this
litigation;

- B. An order striking Plaintiff SCDSS's Court Information Sheet, filed September 14, 2017, as it is an ex parte communication with the court, it contains unverified allegations and inadmissible evidence;
- C. An order forbidding SCDSS from filing Court Information Sheet's in the future because the documents are ex parte communications and they contain unverified allegations and inadmissible evidence;
- D. Motion to stay the trial of this matter until Defendant Warren May returns from his deployment to Afghanistan in May 2018;
- D. An order restraining SCDSS from interrogating Defendants' children at school;
- E. Granting such other and further relief as this Court deems just and proper.

THE FOSTER CARE ABUSE LAW FIRM, PA

Deborah J. Butcher
Robert J. Butcher
S.C. Bar Numbers 74029
Post Office Box 486
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Telephone: 803.432.7599
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dbutcher@camdensc-law.com
rbutcher@camdensc-law.com

September 27, 2017
Manning, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

South Carolina Department of Social
Department,

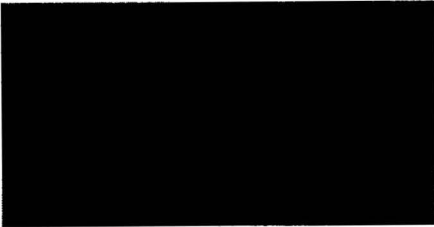
Plaintiff,

v.

Kaci and Warren May

Defendants.

In the Interest of:



Minors under the age of eighteen (18) years of
age.

IN THE FAMILY COURT OF THE
FIRST JUDICIAL CIRCUIT

Case No.: 2017-DR-18-01334

CERTIFICATE OF SERVICE

The undersigned does hereby certify that she is paralegal to the attorney for the Plaintiff in the above stated case; that she has this 5TH day of October 2017 served the following:

- 1-Motion and Order Information Form Coversheet
- 2-Notice of Motion and Motions
- 3-Certificate of Service

The same was emailed to Mary Lee Briggs at marylee@briggsandinglese.com and mailed to Deanne Gray by depositing same in an authorized United States mailbox; that the envelope containing said document was property addressed, securely wrapped and sealed, and bore the proper postage; and the said envelope was addressed to the following:

Deanne M. Gray
216 Orangeburg Rd
Summerville SC 29483

Mary Lee Briggs
marylee@briggsandinglese.com



Tiffany Parnell
Paralegal
Post Office Box 486
Manning, South Carolina 29102

Deborah J. Butcher
dbutcher@camdensc-law.com

Robert J. Butcher
rbutcher@camdensc-law.com



Post Office Box 486
Manning, South Carolina,
29102

Phone: (803) 432-7599
Fax: (803) 432-7466

October 5, 2017

Deanne M. Gray
SCDSS
216 Orangeburg Rd
Summerville, South Carolina 29483

RE: SCDSS v. May (2017-DR-18-01334)

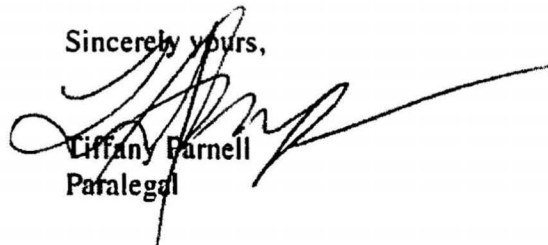
Dear Ms. Gray

Enclosed please find an unfiled copy of the following:

- 1-Motion and Order Information Form Coversheet
- 2-Notice of Motion and Motions
- 3-Certificate of Service

Should you have any questions or concerns, do not hesitate to contact us directly at 803-432-7599.

Sincerely yours,


Tiffany Parnell
Paralegal

Encl.

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)South Carolina Department of Social Services,)

Plaintiff,)

vs.)

Kaci May and Warren May,)

Defendant.)

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUITMOTION AND ORDER INFORMATION
FORM AND COVERSHEETDocket No. 2017-DR-18-01334

Plaintiff's Attorney:

Deborah J. Butcher, Bar No. 74029

Address:

221 Glenwood Drive, Manning, SC 29102

Phone: (803) 432-7599 Fax (803) 432-7466

E-mail: dbutcher@camdensc-law.com Other:

Defendant's Attorney:

Deanne M. Gray, Bar No. _____

Address:

216 Orangeburg Road, Summerville, 29483

Phone: (843) 486-1863 Fax _____

E-mail: _____ Other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Various Forms of ReliefEstimated Time Needed: 15 minutesCourt Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

[Signature]
Signature of Attorney for ☐ Plaintiff / ☒ DefendantSeptember 27, 2017

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☒ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____ Date: _____

Judge Signature: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER) IN THE COURT OF COMMON PLEAS

Kaci May and Kacy May as guardians
 litem for A.R.M., J.H.M., J.T.M., C.B.M.,
 J.R.M., and J.W.M.,

Plaintiffs,

vs.

Dorchester School District Two, Wally
 Baird, Joseph R. Pye, South Carolina
 Department of Social Services, Susan
 Alford, and Jasmine Flemister,

Defendants.

C.A. No. 2017-CP-18-02001

**MOTION TO DISMISS OF DEFENDANTS
 DORCHESTER SCHOOL DISTRICT
 TWO, JOSEPH R. PYE, AND
 WALLY BAIRD**

You will please take notice that the undersigned attorney for Defendants Dorchester School District Two, Wally Baird, and Joseph R. Pye (the "School District Defendants") hereby move to dismiss this action pursuant to Rules 12(b)(1), (6), and (8), before the presiding Judge of the First Judicial Circuit at the Dorchester County Courthouse, St. George, South Carolina, on the tenth (10th) day after service hereof or as soon thereafter as counsel may be heard, on the grounds that:

1. This action should be dismissed pursuant to Rule 12(b)(1) and (8) because another action is pending in Family Court between the Plaintiffs and the South Carolina Department of Social Services, as more fully set forth in DSS's Motion to Dismiss filed with the Court on January 5, 2018, which is incorporated herein by reference. In that action, Plaintiff Kaci May has filed a motion currently pending before the Family Court seeking among other things, "[a]n order restraining DSS from interrogating Defendants' children at school," which is the same relief sought as in the instant case, which seeks temporary and permanent Orders "restraining the SCDSS Defendants from interrogating the Plaintiff Children unless there is a Court Order or new allegation of abuse and/or neglect" and "restraining the School District Defendants from

facilitating the interrogation of the Plaintiff Children unless there is a Court Order or new allegation of abuse and/or neglect.” (Compl. ¶ 44, Prayer for Relief, Para (A), (B), and (C)). An order by the Family Court in Plaintiffs’ favor prohibiting DSS from further interrogation of the Plaintiff children would be eliminate any need for injunctive relief against the School District Defendants in the instant case for allegedly “facilitating” DSS interrogations of the May Children at school.

2. This Court lacks subject matter jurisdiction over the issues raised in the Complaint because the issues raised pertain to child abuse and neglect proceedings pursuant to S.C. Code Ann. § 63-7-1610(A), which are within the exclusive jurisdiction of the Family Court.

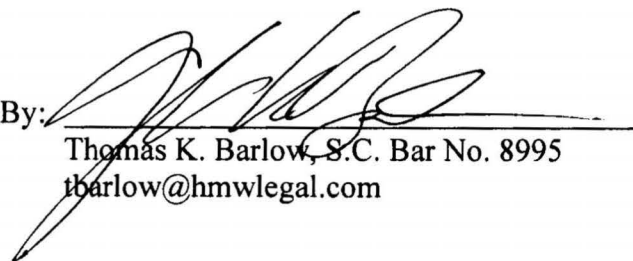
3. The Complaint fails to state facts against the School District Defendants sufficient to constitute a cause of action because the School District Defendants have no legal authority to prevent DSS from interviewing or interrogating children at school who may be victims or witnesses in child abuse and neglect cases. S.C. Code Ann. § 63-7-920(c).

4. There is no basis for individual capacity claims against the school principal or the school superintendent upon the facts alleged in the Complaint.

WHEREFORE, the undersigned Defendants respectfully ask this Court to dismiss the Complaint against them in this action.

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: 
Thomas K. Barlow, S.C. Bar No. 8995
tbarlow@hmwlegal.com

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Defendants Dorchester School
District Two, Wally Baird, and Joseph R. Pye

February 2, 2018

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER) **IN THE COURT OF COMMON PLEAS**

Kaci May, and Kacy May, as guardian)
 ad litem for A.R.M., J.H.M., J.T.M.,) Civil Action No. 2017-CP-18-02001
 C.B.M., J.R.M., and J.W.M.,)
)

Plaintiff,)

v.)

**SUPPLEMENTAL MEMORANDUM IN
 SUPPORT OF
 MOTION TO DISMISS**

Dorchester School District Two, Wally)
 Baird, Joseph R. Pyre, South Carolina) **(Defendants South Carolina Department of**
 Department of Social Services, Susan) **Social Services, Susan Alford, and Jasmine**
 Alford, and Jasmine Flemister,) **Flemister)**
)

Defendants.)
 _____)

STATEMENT

This action was filed on December 7, 2017. Plaintiff Kaci May, as guardian ad litem for several minor children in her family, seeks injunctive relief against Defendants associated with Dorchester School District Two and Defendants associated with the South Carolina Department of Social Services. The relief sought is an injunction prohibiting the school district Defendants from facilitating the interrogation of the Plaintiff Children by DSS at school unless there is a Court Order or a new allegation of abuse and/or neglect, and similarly prohibiting the DSS Defendants from interrogating the Plaintiff Children unless there is a Court Order or a new allegation of abuse and/or neglect.

At the time of the filing of the Complaint, Plaintiff also filed a Motion for Temporary Restraining Order, seeking, on a temporary basis, the same relief as noted above. That motion

was denied at the motion hearing in this Court on July 29, 2019, the Court concluding that Plaintiff had not made a showing of irreparable harm.

All Defendants timely filed Motions to Dismiss in early 2018. The motions did not come before the Court until July 29, 2019. On the Sunday before the Monday hearing in this case, Plaintiff filed a lengthy memorandum in opposition to the motions to dismiss. The DSS Defendants requested an opportunity to file the present memorandum in response to Plaintiff's memorandum.

FACTS

While this case is before the Court on a motion to dismiss, the Plaintiff and the School District Defendants have both supplied affidavits to the Court. Except as noted below, the DSS Defendants do not object to the submissions by either of the other two parties. DSS would submit that the pleadings, motions and exhibits currently before the Court contain everything necessary for the Court to make a final disposition of this case as a matter of law based on undisputed facts. Plaintiff's counsel suggested at the hearing that the present motions to dismiss could be converted into motions for summary judgment, and the DSS Defendants do not oppose that manner of proceeding.

As alleged in the Complaint and in the affidavit of Plaintiff Kaci May, Ms. May and her husband are the parents of seven children, four of whom are their biological children, and the other three of whom were a sibling group adopted by the Mays in 2015. Plaintiff alleges that one or more of the adopted children suffered sexual abuse while in their biological family. In March 2017, there was a meeting between Kaci May and school district personnel regarding an Individualized Education Program meeting for J.H.M., one of the children who is alleged to have suffered sexual abuse. At the meeting, according to her affidavit dated December 29, 2017,

Plaintiff May became “exasperated,” and advised that “J.H.M. raped my babies.” She pointed out that “While this is not the nicest thing to say, it is a truthful reality statement” May Affidavit, p. 3.

This statement by Ms. May made it inevitable that DSS would need to conduct an investigation into the issue of whether there was negligent of the children by the parents or others. This in turn led to DSS interviews with various May children at their school in March and May 2017.

At the beginning of the following (2017-2018) school year, Ms. May purported to advise the school district that no further interviews of her children could occur unless either she or her counsel were contacted first. May Affidavit, p. 4 and Ex. 4.¹ This attempt notwithstanding, some of the children were again interviewed in September 2017. May Affidavit, p. 4. Plaintiff’s counsel sent a letter to the school on October 16, 2017, purporting to “demand” that school officials cease permitting DSS to interview the children at school. *Id.* and Ex. 5 thereto. Another interview occurred on November 20, 2017.

In the meantime, there was a Dorchester County Family Court case. In that case, Plaintiff May filed a counterclaim seeking, among other things, an order restraining SCDSS caseworkers from speaking with the Mays about legal issues in this matter. In addition, and in connection therewith, Plaintiff Kaci May filed a motion in that Family Court action seeking, among other things, “[a]n order restraining SCDSS from interrogating Defendants’ children at school.” Redacted copies of the Mays’ Answer and Counterclaim and the above-referenced motion were attached as Exhibit B to these Defendants’ Motion to Dismiss.

That action was dismissed by stipulation on June 14, 2018. As Plaintiff states:

¹ The affidavit mistakenly states that this occurred at the beginning of the 2016-2017 school year, but the requests were dated August 3, 2017.

In *SCDSS v. May*, Case Number 2017-DR-18-01334, the parties filed a stipulation for voluntary dismissal. Exhibit 9. There was no judgement on any of the issues, except SCDSS agreed that, “Plaintiff SCDSS’s investigation beginning on or about March 28, 2017 resulting in a finding of abuse and/or neglect on or about May 12, 2017 is hereby overturned.”. Exhibit 9.

Plaintiff’s Memorandum in Opposition, p. 12. Consistently with that statement, the DSS Defendants have submitted as an exhibit to this Memorandum an affidavit of Kristine Bear, County Director for the Dorchester County Department of Social Services. Ms. Bear avers that “DSS has not interviewed the minor children at school since November 20, 2017. DSS closed its case involving the minor children on or about June 21, 2018,” and that “Based on available information, DSS has no present plans to interview any of the minor children.” Bear Affidavit, ¶¶ 3, 5.

ARGUMENT²

- 1. This Court lacks subject matter jurisdiction over the issues raised in the Complaint herein, because the issues raised in this case pertain to child abuse and neglect proceedings which, pursuant to S.C. Code Ann. §63-7-1610(A), are within the exclusive jurisdiction of the Family Court.**

At the hearing in this on July 29, 2019, undersigned counsel indicated that perhaps Plaintiff’s arguments on this point were well taken, primarily because of a belief that a claim under 42 U.S.C. ¶ 1983 could not be raised in Family Court. However, whether that belief is correct or not, any inability to bring a § 1983 claim in Family Court would not be dispositive of this Court’s subject matter jurisdiction over Plaintiff’s challenge to DSS interrogations of children in school in connection with child abuse allegations. Section 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere

² These Defendants originally included Rule 12(b)(8) (“another action pending”) as a ground for their Motion to Dismiss, but that ground no longer exists, given the dismissal of the Family Court case.

conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). In other words, even if Plaintiff could not use Section 1983 as the procedural vehicle in Family Court to challenge these interrogations, they would still be able to raise their objections, based on either state or federal law, in the course of the Family Court proceeding. By analogy, a criminal defendant does not raise Fourth Amendment challenges in a criminal proceeding by the use of Section 1983, but the challenges can nevertheless be raised in the course of a criminal proceeding without the need for Section 1983 as a procedural vehicle. Plaintiff tacitly admitted as much when she sought a Family Court order “restraining SCDSS caseworkers from speaking with the May’s about legal issues in this matter.” Exhibit B to these Defendants’ Motion to Dismiss, p. 8.

There is no question that Fourth Amendment and related challenges can be raised in a Family Court proceeding. Indeed, in *S.C. Dep’t of Soc. Servs. v. Wicker*, No. 2014-002734, 2016 WL 3211242, at *2 (S.C. Ct. App. June 8, 2016), a Fourth Amendment challenge was rejected on appeal solely because the appellants “never raised a due process or Fourth Amendment argument to the family court.”

Given that Plaintiff’s Section 1983 argument is without merit, an examination of the pertinent statutes makes it clear that Family Courts have exclusive jurisdiction over the issues raised in this case. It is undisputed that the interviews with the children were conducted in connection with an investigation of child abuse and neglect. It likewise cannot be disputed that DSS is required by law to investigate any “report of suspected child abuse or neglect. . . .” S.C. Code Ann. § 63-7-920(A)(1). Another subsection of the same statute, § 63-7-920(C), provides in pertinent part that

(C) The department [DSS] or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in

the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents.

This statute makes it clear that the interviews of children can occur without a warrant. However, even if Plaintiff is correct that a warrant is needed for such interviews, which is denied, the preceding subsection, § 63-7-920(B), provides that DSS

may file with the family court an affidavit and a petition to support issuance of a warrant at any time after receipt of a report. The family court must issue the warrant if the affidavit and petition establish probable cause to believe the child is an abused or neglected child and that the investigation cannot be completed without issuance of the warrant.

(Emphasis added.) This placement of the power and jurisdiction in the Family Courts to issue warrants reflects other language in the same title and article of the Code which provides that “The family court has exclusive jurisdiction over all proceedings held pursuant to this article.” § 63-7-1610(A). Abuse and neglect investigations are conducted for the sole purpose of determining whether a proceeding should be instituted pursuant to Title 63, Article 3 (“Identification, Investigation and Intervention” in matters involving child welfare), and therefore fall within the supervision of the Family Courts in the exercise of their exclusive jurisdiction over such matters.

Plaintiff baldly asserts that “Simply because SCDSS and allegations of child abuse and neglect are involved does not mean that jurisdiction falls within the purview of the family courts.” Pl. Memo at 10. However, Plaintiff provides no reason to read the above-cited statutes as conferring anything other than exclusive jurisdiction over child abuse and neglect investigations on the family courts.

Plaintiff offers several arguments about why the relief Plaintiff seeks should be available in other courts. None of those arguments refer to the statutes. Nor do those arguments provide any obstacle to a holding that the Family Courts have exclusive jurisdiction over such matters. First, as already discussed, any unavailability of Section 1983 in Family Courts does not preclude raising search or seizure challenges in those courts. Plaintiff then argues that a money damage claim under Section 1983 could not be brought in family court, but such an action would seek a monetary remedy for events in the past, rather than prospective injunctive relief in connection with future events, as sought in the present case.

Plaintiff next argues that jury trials are not available in family courts, but this makes no difference, because jury trials are not available (except perhaps on an advisory basis) in normal civil actions for injunctive relief. This case, of course, is an action in which only injunctive relief is requested. Plaintiff then argues that summary motion remedies could not be sought in family courts, but those remedies would not pertain to a challenge to a search or seizure. Plaintiff argues that a class action could not be filed in family court, but there is at least a possibility that such an action could be filed in federal court, if it could be found not to violate federalism principles.

After a short diversion discussing preclusion principles Pl. Memo at 11-13, an argument which these Defendants have not made, Plaintiff attempts to assert still more reasons why family courts do not have exclusive jurisdiction over the matters raised in this case. Pl. Memo at 13-14. As with Plaintiff's other arguments on this point, these assertions do not even refer to the language of the statutes.

Plaintiff illogically claims that family courts cannot have exclusive jurisdiction over the issues in this case because those courts' jurisdiction "is limited in time." Pl. Memo at 13. This claim is based on an erroneous assumption that a family court does not acquire jurisdiction over

an abuse and neglect matter until DSS files a summons and complaint. *Id.*, citing § 63-7-20(6), which has no apparent relevance to that issue. As shown above, § 63-7-920(B) authorizes a family court to issue warrants if necessary, with no requirement that a judicial action must already be commenced. Indeed, such warrants are specifically authorized to aid in completing investigations, which normally would be completed before an action is filed in a family court, unless a legal action is filed earlier, based upon immediate and substantial danger from the initial report/investigation or by law enforcement, well before the case determination has been made.

Plaintiff next claims that the confidentiality of family court proceedings “would limit the Plaintiff’s ability to share the order or the public’s ability to obtain the order to enforce compliance.” Pl. Memo at 14. In a similar vein, Plaintiff also complains that “Had Plaintiffs filed a civil rights claim in Family Court,” or in the more likely scenario, had Plaintiff sought injunctive relief in that court, “the Family Court would not have been able to obtain personal jurisdiction over the School District Defendants. . . .” *Id.* Again, however, these concerns are not valid. Family courts are vested with authority “to make any order necessary to carry out and enforce the provisions of this title. . . .” § 63-3-530(30). This power includes the power “to issue orders compelling public officials and officers to perform official acts under Title 63, the Children's Code . . .” § 63-3-530(36). In the somewhat-unlikely event that DSS ignored an injunction prohibiting in-school contact with a child, and then school officials permitted DSS to conduct interviews on school premises, a family court would clearly have the power to enforce its injunction by directing an order to the school district. This entire scenario, however, is completely speculative and unlikely in any event.

2. **Even if this Court were to hold that it has jurisdiction, Plaintiff Kaci May has no standing to represent the interests of the children in not being interviewed, and in fact has a conflict which prevents her from asserting those claims on behalf of the children.**

It is undisputed that the now-dismissed family court case referenced above pertained to allegations of possible abuse or neglect against the present Plaintiff, Kaci May. While the allegations ultimately were unfounded, Ms. May was in effect attempting to have the family court enjoin interviews by DSS of the very children she was alleged to have been subjecting to some form of abuse or neglect. As a result, and as counsel for these Defendants pointed out at the hearing in this matter, Ms. May is the last person who should be permitted to maintain this action on behalf of the children. Imagine a scenario in which this Court's Order would be utilized to shield an alleged child abuser and allow the abuser to prevent questioning the victim child outside the presence of the abuser—providing a tool and an advantage to the abuser rather than the investigators.

The facts of this case are similar to those in No. 3:17-0416, *M.M., et al. v. Mitchum, et al.*, in which Judge Gergel, on his own motion, removed a non-natural parent from serving as GAL for the person's custodial children when the GAL had alleged that the custodial children sexually assaulted the natural children. As Judge Gergel held,

Under the present circumstances, where various custodial children are alleged to have sexually assaulted each other, it would appear that a single GAL for all four children is inappropriate as each probably requires his or her own GAL. Further, it is inconceivable that Ms. Mitchell could serve as the GAL for minors she has alleged sexually assaulted her own children.

M.M., supra, ECF No. 46 (Order dated 5/6/2017). (A copy of this Order was handed up during the hearing.) The counsel for the parties in the *M.M.* case is the same counsel who currently purports to represent Ms. May as the GAL for the children. The same conflict is present, and Ms.

May should be removed as GAL, with the case to be refiled by a proper GAL only if an actual case or controversy arises at some point in the future, as discussed in the next section of this memorandum.

3. **Even if this Court were to hold that it has jurisdiction over this case, the case no longer presents a live case or controversy, a fact that also precludes any contention that an injunction is presently necessary.**

It is undisputed that DSS has not sought to interview the children in well over 18 months, the last such interviews having been conducted in November 2017. The underlying family court action that was the reason for the interviews was dismissed by consent on June 14, 2018, with it being agreed by DSS that any finding by DSS of abuse and neglect was overturned. Ex. 9 to Pl. Memo. Plaintiff has also noted that at least four of the seven May children are now homeschooled. Pl. Memo at 19.

In light of these circumstances, there is no longer a live case or controversy that requires intervention by this Court, even if this Court has jurisdiction over this matter and Ms. May can serve as the GAL, which she almost certainly cannot. The appellate courts of South Carolina routinely hold that ““A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy.” *Jowers v. S.C. Dep’t of Health & Envtl. Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018), quoting *Peoples Fed. Sav. & Loan Ass’n v. Res. Planning Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004). The Court in *Jowers, supra*, further held that “a . . . court should not decide a controversy grounded in uncertain and contingent events that may not occur as anticipated or may not occur at all.” 423 S.C. at 361, 815 S.E.2d at 455.

Those holdings describe the state of the present case. Plaintiff offers nothing but unfounded speculation that at some future time there might be another allegation of abuse and

neglect in the May household. Plaintiff claims that this case is “capable of repetition, yet evading review.” Pl. Memo at 19-20. However, Plaintiff offers only speculation that the facts of this matter might repeat themselves later.³ Plaintiff also cannot show that any later DSS investigation could not be enjoined by a family court. In other words, such events are not “incapable of review.” And again, far from being the appropriate person to seek an injunction against future misconduct that may be her own, Ms. May is hopelessly conflicted from representing the children’s interests in this matter.

Finally, it follows inevitably that the absence of a live claim defeats the ability of Plaintiff to obtain injunctive relief. *See, e.g., O’Shea v. Littleton*, 414 U.S. 488, 495–96 (1974)(“[p]ast exposure to [allegedly] illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if 496 unaccompanied by any continuing, present adverse effects”). As our Supreme Court has held, “[a]n injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Lambries v. Saluda Cty. Council*, 409 S.C. 1, 7, 760 S.E.2d 785, 788 (2014). Where, as here, there is no showing that adverse future events may occur at all, it follows that there has also been no showing of irreparable harm.

4. DSS is expressly authorized by statute to interview children in public schools, and Plaintiff’s claims of potential constitutional violations are without support.

S.C. Code Ann. §63-7-920(C) authorizes interviews in schools in this context:

(C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on

³ Notably, the report/allegation that necessitated investigation of the instant case was made by the Plaintiff herself and not a third-party observer or mandatory reporter of any kind. Thus, the facts of this particular case cannot be repeated unless the Plaintiff herself re-alleges that sexual abuse is occurring in her home.

school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child.

The existence of this statute would end the question, but for Plaintiff's argument that such interviews violate the Fourth Amendment.⁴ That argument is unavailing, for several different reasons set forth below.

First, the Supreme Court of South Carolina follows the general rule that "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.." *State v. Robinson*, 410 S.C. 519, 527, 765 S.E.2d 564, 568 (2014), quoting *Rakas v. Illinois*, 439 U.S. 128, 133–34 (1978). Plaintiff Kaci May is not the person injured, and she is manifestly barred from serving as GAL for the reasons set forth above.

Secondly, even if Plaintiff had standing to challenge this practice, the Fourth Amendment prohibits only "unreasonable searches and seizures. . . ." The Fourth Circuit has held that "In determining whether a search and seizure is reasonable, we must balance the government's need to search with the invasion endured by the plaintiff. *New Jersey v. T.L.O.*, 469 U.S. 325, 337, (1985). *Wildauer v. Frederick Cty.*, 993 F.2d 369, 372 (4th Cir. 1993). In *Wildauer*, the Fourth

⁴ Plaintiff appears to argue, Memo at 39-40. that the authorization (not a requirement) for search warrants in §63-7-920(B) applies to interviews under subsection –(C), but subsection –(B) by its terms applies only when "the investigation cannot be completed without issuance of the warrant."

Circuit held that investigative visits by social workers, even when the home itself is visited, “are not subject to the same scrutiny as searches in the criminal context.” *Id.* The Fourth Circuit has further held that “A state has a legitimate interest in protecting children from neglect and abuse and in investigating situations that may give rise to such neglect and abuse.” *Martin v. Saint Mary's Dep't Soc. Servs.*, 346 F.3d 502, 506 (4th Cir. 2003).

Plaintiff cites many Fourth Amendment cases, Pl. Memo at 26-38, but only one, *Greene v. Camreta*, 588 F.3d 1011 (9th Cir. 2009), contains a holding favorable to Plaintiff on the Fourth Amendment under the present facts, and that case was vacated in part based on mootness, 563 U.S. 692 (2011), with the Supreme Court declining to rule on that issue. *Greene* is countered by an Eleventh Circuit case, *Loftus v. Clark-Moore*, 690 F.3d 1200, 1205 (11th Cir. 2012), which holds that a social worker was “entitled to qualified immunity on the ground that she did not violate any clearly established right protected by the Fourth Amendment when she interrogated [a child at school] as part of an investigation of the child's welfare”). As far as counsel for these Defendants can tell, there is no case which definitively holds that the kind of interviews conducted by DSS in this case violate children’s Fourth Amendment rights, and certainly none in South Carolina or even in the Fourth Circuit. The Court would be warranted in holding Plaintiff’s Fourth Amendment claims to be without merit, but it does not appear necessary for this Court to reach that issue, given the other issues discussed above that should require dismissal of this action, and given that the Supreme Court declined to address the issue in *Greene, supra*, once that case became moot.

CONCLUSION

For the foregoing reasons, the DSS Defendants respectfully submit that this action should be dismissed.

DAVIDSON, WREN & PLYLER, P.A.

BY: s/ Kenneth P. Woodington

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*Counsel for Defendants South Carolina Department
of Social Services, Susan Alford, and Jasmine
Flemister*

Columbia, South Carolina

August 16, 2019

Exhibit: Affidavit of Kristine Bear

ROA 000072

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Kaci May and Kaci May as guardian ad
Litem for A.R.M., J.H.M., J.T.M.,
C.B.M., J.R.M., and J.W.M.,

Plaintiff,

vs.

Dorchester School District Two, Wally
Baird, Joseph R. Pye, South Carolina
Department of Social Services, Susan
Alford, and Jasmine Flemister,

Defendant(s),

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
C.A. No.: 2017-CP-18-02001

AFFIDAVIT OF KRISTINE BEAR

PERSONALLY APPEARED BEFORE ME Kristine Bear, who being first duly sworn, deposes and says as follows:

1. I am over eighteen (18) years of age, and I have personal knowledge of the facts and circumstances set forth in this Affidavit.
2. I am the current County Director for Dorchester County Department of Social Services ("DSS").
3. Records indicate that DSS has not interviewed the minor children at school since November 20, 2017. DSS closed its case involving the minor children on or about June 21, 2018.
4. There is no record that DSS has had any contact with Plaintiff Kaci May or the minor children since June 21, 2018.
5. Based on available information, DSS has no present plans to interview any of the minor children.

ROA 000072

Further, Affiant sayeth not.

Kristine Bear
Kristine Bear, County Director
Dorchester County
Department of Social Services

SWORN TO BEFORE ME this
15th Day of August, 2019

Rochelle K. Wiggins
Notary Public for South Carolina
My Commission Expires: 9/9/2021



STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
)
Kaci May and Kacy May as guardian ad)
litem for A.R.M., J.H.M., J.T.M., C.B.M.,)
J.R.M., and J.W.M.,)
)
Plaintiff,)
)
vs.)
)
)
Dorchester School District Two, South)
Carolina Department of Social Services,)
Susan Alford, and Jasmine Flemister,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No. 2017-CP-18-02001

**DEFENDANT DORCHESTER SCHOOL
DISTRICT TWO'S ANSWER AND
AFFIRMATIVE DEFENSES**

Defendant Dorchester School District Two, by and through its undersigned counsel, hereby responds to the Complaint of Plaintiffs, Kaci May and Kacy May, et al., and denies each and every allegation of the Complaint except as may be expressly admitted herein. Defendant responds to the specific allegations of Plaintiff's Complaint, in accordance with the numbered paragraphs thereof, as follows:

PARTIES AND JURISDICTION

1. Denied for lack of knowledge.
2. Upon information and belief, admitted.
3. Admitted.
4. Pursuant to court order, Mr. Baird is no longer a defendant in this action and thus, this allegation is moot. To the extent that any response is required, the allegation is denied.
5. Pursuant to court order, Mr. Pye is no longer a defendant in this action and thus, this allegation is moot. To the extent that any response is required, the allegation is denied.
6. Pursuant to court order, Mr. Baird and Mr. Pye are no longer defendants in this action and thus, this allegation is moot. To the extent that any response is required, it is denied.

7. This allegation is not directed at this Defendant and therefore, does not require a response. To the extent that a response is required, it is admitted.

8. This allegation is not directed at this Defendant and therefore does not require a response. To the extent that a response is required, it is denied.

9. This allegation is not directed at this Defendant and therefore does not require a response. To the extent that a response is required, it is denied.

10. This allegation is not directed at this Defendant and therefore does not require a response. To the extent that a response is required, it is denied.

GENERAL ALLEGATIONS

11. Defendant incorporates its responses above as if repeated herein verbatim.

12. Admitted.

13. The allegations of this paragraph contain legal conclusions and therefore, are neither admitted nor denied.

14. The allegations of this paragraph contain legal conclusions and therefore, are neither admitted nor denied.

15. The allegations of this paragraph contain legal conclusions and therefore, are neither admitted nor denied.

16. The allegations of this paragraph contain legal conclusions and therefore, are neither admitted nor denied.

17. The allegations of this paragraph contain legal conclusions and policy assertions and therefore, are neither admitted nor denied.

18. Upon information and belief, admitted.

19. Denied for lack of knowledge.

20. Denied for lack of knowledge.

21. Denied for lack of knowledge.

22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. Denied for lack of knowledge.
27. Denied for lack of knowledge.
28. Denied.
29. Denied for lack of knowledge.
30. Denied as stated. There is a South Carolina law that allows SCDSS caseworkers to visit with school children when there is a report of abuse or neglect.
31. Denied.
32. Denied as stated. Defendant District admits only that it has allowed SCDSS to interview students in the course of an investigation.
33. The allegations of this paragraph contain legal conclusions and therefore, are neither admitted nor denied.
34. The allegations of this paragraph contain legal conclusions and therefore, are neither admitted nor denied.
35. Denied for lack of knowledge.
36. Denied for lack of knowledge.
37. Denied as stated. Defendant admits only that Plaintiffs are seeking injunctive relief.
38. Denied.

FOR A FIRST CAUSE OF ACTION

(42 U.S.C. § 1983 – Injunctive Relief – School Interrogations)

39. Defendant incorporates its responses above as if repeated herein verbatim.
40. Denied.

41. Denied.

42. The allegations of this paragraph contain legal conclusions and therefore, are neither admitted nor denied. To the extent that any response is required, the allegations are denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied that Plaintiff is entitled to the relief requested or any other recovery whatsoever from Defendant.

48. Denied that Plaintiff is entitled to the relief requested or any other recovery whatsoever from Defendant.

FOR A SECOND CAUSE OF ACTION

(South Carolina Constitution – Injunctive Relief – School Interrogations)

49. Defendant incorporates its responses above as if repeated herein verbatim.

50. Denied.

51. Denied.

52. The allegations of this paragraph contain legal conclusions and therefore, are neither admitted nor denied. To the extent that any response is required, the allegations are denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied that Plaintiff is entitled to the relief requested or any other recovery

whatsoever from Defendant

58. Denied that Plaintiff is entitled to the relief requested or any other recovery whatsoever from Defendant

FIRST AFFIRMATIVE DEFENSE

The District and its personnel acted reasonably, without malice, and in good faith at all times concerning Plaintiff.

SECOND AFFIRMATIVE DEFENSE

To the extent that the complaint fails to state facts sufficient to constitute a cause of action, Plaintiffs' claims should be dismissed.

THIRD AFFIRMATIVE DEFENSE

To the extent that Plaintiffs seek recovery against Defendant under 42 U.S.C. § 1983, their claims are barred because no official policy or custom of Defendant School District played any part in the alleged constitutional violation, which is expressly denied.

FOURTH AFFIRMATIVE DEFENSE

Any injuries claimed to have been sustained by Plaintiffs were not proximately caused by an act of Defendant, but rather was due to the intervening, independent, and intentional act of a third person; said act being the sole, approximate and direct cause of Plaintiffs' alleged injury, for which Defendant is not liable.

FIFTH AFFIRMATIVE DEFENSE

Defendant is not liable because Plaintiffs' alleged loss, if any, which is expressly denied, resulted from the intervening and superseding intentional conduct and/or negligence of a third party not employed by the District.

SIXTH AFFIRMATIVE DEFENSE

Defendant would allege that the Court lacks jurisdiction of the matters which involve the South Carolina Family Court.

SEVENTH AFFIRMATIVE DEFENSE

Defendant would allege that any claims litigated or that could have been litigated in the South Carolina Family Court are barred by the Doctrines of Collateral, Estoppel, Res judicata, and/or issue preclusion.

EIGHTH AFFIRMATIVE DEFENSE

Defendant are not liable to the extent that Plaintiffs' action is barred by the Statute of Limitations.

NINTH AFFIRMATIVE DEFENSE

Plaintiff Kaci May lacks standing to prosecute this action as guardian ad litem of the minor children in this case.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant Dorchester School District Two respectfully requests that the Complaint be dismissed with prejudice and that it be awarded the costs of this action, together with a reasonable attorney's fee as permitted by law or equity.

Respectfully submitted,

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

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Attorneys for Defendants Dorchester School
District Two

March 30, 2020

Columbia, South Carolina

CERTIFICATE OF SERVICE BY E-MAIL

The undersigned of Halligan Mahoney Williams Smith Fawley & Reagle, PA, hereby certifies that she has served the following counsel of record with the foregoing **DEFENDANT DORCHESTER SCHOOL DISTRICT TWO'S ANSWER AND AFFIRMATIVE DEFENSES** by e-mailing a copy of same to the following on this 30th day of March, 2020:

Robert J. Butcher, Esq.
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Camden, SC 29021

Deborah J. Butcher, Esq.
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Columbia, SC 29202

s/ Danielle R. Hightower

Danielle R. Hightower

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF DORCHESTER)

Kaci May, and Kacy May, as guardian ad)
 litem for A.R.M., J.H.M., J.T.M.,) Civil Action No. 2017-CP-18-02001
 C.B.M., J.R.M., and J.W.M.,)

Plaintiff,)

ANSWER

v.)

**(Defendants South Carolina Department of
 Social Services, Susan Alford, and Jasmine
 Flemister)**

Dorchester School District Two, Wally)
 Baird, Joseph R. Pyre, South Carolina)
 Department of Social Services, Susan)
 Alford, and Jasmine Flemister,)

Defendants.)
 _____)

Defendants South Carolina Department of Social Services, Susan Alford, and Jasmine Flemister, and their official-capacity successors in office, answering the Complaint herein, allege the following:

FOR A FIRST DEFENSE

1. The Complaint fails to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE

2. Any allegation of the Complaint not hereinafter admitted or qualified is denied.
3. Paragraphs 1 and 2 are admitted on information and belief.
4. Paragraph 3 is admitted.
5. Paragraphs 4 and 5 are denied for lack of information.
6. Paragraph 6 is merely descriptive and requires no response. To the extent that such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

7. Paragraph 7 is admitted.
8. Answering Paragraph 8, it is admitted that one of the Defendants is the Director of the South Carolina Department of Social Services and is sued in his official capacity.
9. Answering Paragraph 9, it is admitted that one of the Defendants is a caseworker of the South Carolina Department of Social Services and is sued in his or her official capacity.
10. Paragraph 10 is merely descriptive and requires no response. To the extent that such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.
11. Answering Paragraph 11, these Defendants reiterate and reallege each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.
12. Paragraphs 12 through 17 set forth legal conclusions which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.
13. Paragraphs 18 through 21 are denied for lack of information.
14. Paragraph 22 is denied.
15. Paragraphs 23 through 25 make allegations pertaining to other persons or Defendants, and as such require no response from these Defendants. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.
16. Answering Paragraphs 26 and 27, these Defendants would refer the Court to pertinent agency and court records for the best evidence of the matters referenced therein. Except as expressly admitted, Paragraphs 26 and 27 are denied.

17. The first sentence of Paragraph 28 is denied. Answering the second sentence of Paragraph 28, these Defendants would refer the Court to pertinent agency and court records for the best evidence of the matters referenced therein. Except as expressly admitted, Paragraph 28 is denied.
18. Answering Paragraph 29, these Defendants would refer the Court to pertinent agency and court records for the best evidence of the matters referenced therein. Except as expressly admitted, Paragraph 29 is denied.
19. Paragraph 30 appears to set forth conclusions of law which can neither be admitted nor denied. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.
20. Answering Paragraphs 31 and 32, these Defendants would show that DSS is expressly authorized by S.C. Code Ann. § 63-7-920(C) to interview children in public schools and that to the extent that the facts alleged therein are true, the actions of DSS therein alleged were performed in conformity with all state and federal laws. Except as expressly admitted, Paragraphs 31 and 32 are denied.
21. Paragraphs 33 and 34 are denied.
22. Answering Paragraph 35, these Defendants would refer the Court to the letter referenced therein for the best evidence of its contents. Except as expressly admitted, Paragraph 35 is denied.
23. Answering Paragraph 36, these Defendants would refer the Court to pertinent agency records for the best evidence of the matters alleged therein. Except as expressly admitted, Paragraph 36 is denied.

24. Paragraph 37 is merely descriptive of Plaintiffs' allegations, and requires neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.
25. Paragraph 38 is denied.
26. Answering Paragraph 39, these Defendants reiterate and reallege each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.
27. Answering Paragraph 40, these Defendants would show that DSS is expressly authorized by S.C. Code Ann. § 63-7-920(C) to interview children in public schools and that to the extent that the facts alleged therein are true, the actions of DSS therein alleged were performed in conformity with all state and federal laws. These Defendants would further show that that DSS has not interviewed the minor children at school since November 20, 2017, that DSS closed its case involving the minor children on or about June 21, 2018, and that there is no record that DSS has had any contact with Plaintiff Kaci May or the minor children since June 21, 2018. In addition, based on currently available information, DSS has no present plans to interview any of the minor children. Except as expressly admitted, Paragraph 40 is denied.
28. Paragraph 41 makes allegations pertaining to other persons or Defendants, and as such require no response from these Defendants. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.
29. Paragraph 42 is denied.
30. Answering Paragraph 43, these Defendants would show that DSS is expressly authorized by S.C. Code Ann. § 63-7-920(C) to interview children in public schools and that to the

extent that the facts alleged therein are true, the actions of DSS therein alleged were performed in conformity with all state and federal laws. Except as expressly admitted, Paragraph 43 is denied.

31. Paragraphs 44 and 45 are denied.

32. Answering Paragraph 46, these Defendants would show that the present action is indeed moot, contrary to the allegations of that paragraph. Except as expressly admitted, Paragraph 46 is denied.

33. Paragraphs 47 and 48 are merely descriptive of Plaintiffs' claims or allegations, and require neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

34. Answering Paragraph 49, these Defendants reiterate and reallege each and every paragraph and affirmative defense of this Answer as if set forth herein verbatim.

35. Answering Paragraph 50, these Defendants would show that DSS is expressly authorized by S.C. Code Ann. § 63-7-920(C) to interview children in public schools and that to the extent that the facts alleged therein are true, the actions of DSS therein alleged were performed in conformity with all state and federal laws. These Defendants would further show that that DSS has not interviewed the minor children at school since November 20, 2017, that DSS closed its case involving the minor children on or about June 21, 2018, and that there is no record that DSS has had any contact with Plaintiff Kaci May or the minor children since June 21, 2018. In addition, based on currently available information, DSS has no present plans to interview any of the minor children. Except as expressly admitted, Paragraph 50 is denied.

36. Paragraph 51 makes allegations pertaining to other persons or Defendants, and as such require no response from these Defendants. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.
37. Paragraph 52 is denied.
38. Answering Paragraph 53, these Defendants would show that DSS is expressly authorized by S.C. Code Ann. § 63-7-920(C) to interview children in public schools and that to the extent that the facts alleged therein are true, the actions of DSS therein alleged were performed in conformity with all state and federal laws. Except as expressly admitted, Paragraph 53 is denied.
39. Paragraphs 54 and 55 are denied.
40. Answering Paragraph 56, these Defendants would show that the present action is indeed moot, contrary to the allegations of that paragraph. Except as expressly admitted, Paragraph 46 is denied.
41. Paragraphs 57 and 58 are merely descriptive of Plaintiffs' claims or allegations, and require neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.
42. All remaining allegations of the Complaint, including the Prayer for Relief which follows Paragraph 58, are denied.

FOR A THIRD DEFENSE

43. This Court lacks subject matter jurisdiction over the issues raised in the Complaint herein, because the issues raised in this case pertain to child abuse and neglect proceedings which,

pursuant to S.C. Code Ann. § 63-7-1610(A), are within the exclusive jurisdiction of the Family Court.

FOR A FOURTH DEFENSE

44. Even if this Court were to be held to have jurisdiction, Plaintiff Kaci May has no standing to represent the interests of the children in not being interviewed, and in fact has a conflict which prevents her from asserting those claims on behalf of the children.

FOR A FIFTH DEFENSE

45. Even if this Court were to be held to have jurisdiction over this case, this case no longer presents a live case or controversy, a fact that also precludes any contention that an injunction is presently necessary.

FOR A SIXTH DEFENSE

46. Even if this Court were to be held to have jurisdiction over this case, this case is moot and does not present any reason to apply any exceptions to mootness doctrine.

FOR A SEVENTH DEFENSE

47. Any claims raised in this action that were litigated or that could have been litigated in the South Carolina Family Court are barred by the doctrines of claim preclusion and/or issue preclusion.

FOR AN EIGHTH DEFENSE

48. No relief is obtainable from these Defendants to the extent that Plaintiffs' action is barred by applicable statutes of limitations.

WHEREFORE, having fully answered the Complaint herein, these Defendants respectfully pray that this action be dismissed.

DAVIDSON, WREN & DEMASTERS, P.A.

BY: s/ Kenneth P. Woodington

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*Counsel for Defendants South Carolina Department of
Social Services, Susan Alford, and Jasmine Flemister*

Columbia, South Carolina

March 31, 2020

1 STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
2 COUNTY OF DORCHESTER) OF COMMON PLEAS
3) FIRST JUDICIAL CIRCUIT
4 KACI MAY & KACI MAY,) CASE NO.
as guardian ad litem for) 2017-CP18-02001
A.R.M., J.H.M., J.T.M,)
5 C.B.M., J.R.M. and J.W.M.,)
6 Plaintiffs,) Transcript of Record
7 vs.) Non-Jury Trial Day 1
8 DORCHESTER SCHOOL)
DISTRICT TWO, et al.,)
9)
10)
Defendants.

11 * * * * *

12

13 B E F O R E:

14 The Honorable Maite Murphy

15 * * * * *

16

17 Krista Nicole Carney, Stenographic
18 Court Reporter, transcribed by a
19 Stenographic Court Reporter
20
21
22
23
24
25

1 A P P E A R A N C E S

2 REPRESENTING THE PLAINTIFFS:

3 ROBERT BUTCHER, ESQUIRE

4 and DEBORAH BUTCHER, ESQUIRE

5 THE CAMDEN LAW FIRM

6 1042 Broad Street

7 Camden, SC 29020

8

9

10 REPRESENTING THE DEFENDANTS (DEPARTMENT OF SOCIAL
11 SERVICES, et al):

12 WILLIAM H. DAVIDSON, II

13 KENNETH WOODINGTON, ESQUIRE

14 DAVIDSON, WREN & DEMASTERS, P.A.

15 1611 Devonshire Drive, Second Floor

16 Columbia, SC 29204

17

18 REPRESENTING THE DEFENDANT (DORCHESTER SCHOOL
19 DISTRICT TWO):

20

21 SUSAN MARIE FITIPALDI, ESQUIRE

22 HALLIGAN, MAHONEY & WILLIAMS, P.A.

23 1122 Lady Street, Suite 610

24 Columbia, SC 29201

25

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1 (The following proceedings were held
2 8/11/2020, Dorchester General Session Trial, Judge
3 Maite Murphy)

4 PROCEEDINGS

5 THE COURT: All right. Are the parties
6 ready to proceed?

7 MR. BUTCHER: The Plaintiffs are ready,
8 Your Honor.

9 MR. BARLOW: The School District is
10 ready, Your Honor.

11 MR. DAVIDSON: The Defendants are
12 ready, Your Honor. I don't know how you want to
13 handle objections as exhibits come in.

14 THE COURT: Probably the easiest way to
15 do it as they try to introduce them just put your
16 objection on the record, then that way you don't
17 have to reobject when they try to do it, rather
18 than do it in limine.

19 MR. DAVIDSON: And, Your Honor, I may
20 show no disrespect to the Court, but I may be slow
21 getting up.

22 THE COURT: That's fine.

23 MR. DAVIDSON: And I've got a bad hip
24 and I'm going to have to have it fixed sooner than
25 later.

1 THE COURT: If you have a medical
2 condition which prevents you from standing, if you
3 want to just raise your hand and let me know.

4 MR. DAVIDSON: I have a cane. I like
5 to stand. But it may that I sit at the end of the
6 table.

7 THE COURT: Sure. Just make yourself
8 comfortable. That's not a problem at all.

9 MR. DAVIDSON: If I don't just stand up
10 as quick as I normally would --

11 THE COURT: I'll look for movement, how
12 about that?

13 MR. DAVIDSON: Thank you, ma'am.

14 THE COURT: All right.

15 And, just for the record, I've asked
16 both parties to submit -- or three parties to
17 submit pretrial briefs to help facilitate timing
18 wise, and to streamline the process for today's
19 proceedings. And by doing so, the parties have
20 indicated that they wish to -- or are you okay with
21 waiving their opening statements, considering the
22 fact that I've had an opportunity to review all the
23 parties pretrial briefs.

24 Is there any objections to that from
25 anyone?

1 MR. BARLOW: No objection.

2 MT. WOODINGTON: No objection.

3 MR. BUTCHER: No objection. And we'll
4 be allowed to summarize at the end?

5 THE COURT: Certainly.

6 MR. BUTCHER: Briefly, right?

7 THE COURT: Yes, sir. You may call
8 your first witness.

9 MS. BUTCHER: Thank you, the Plaintiffs
10 call **A.R.M. A.R.M. A.R.M.**

11 What is the protocol with masks?

12 THE COURT: If you wish to take your
13 mask off while you're questioning the witness, the
14 witness can take her mask off when she's seated,
15 and six feet away.

16 MR. BUTCHER: You know we added her
17 last night because -- and I apologize. Because she
18 had some -- she had some additional times, so I put
19 her in last night. I apologize. I forgot to send
20 that out.

21 MR. WOODINGTON: And I'm going to
22 object to her being called as a witness.

23 MS. FITIPALDI: I would join in that
24 objection.

25 THE COURT: All right. Counsel, what's

1 the purpose of this witness' testimony?

2 MR. BUTCHER: Your Honor, one, she is a
3 party. And, two, she had some -- just obviously no
4 one wants to hear from all seven kids who are going
5 to say the same thing.

6 But we didn't think that one was enough
7 regarding the -- she had some different things to
8 say about how it affected her and those types of
9 things.

10 So the Court can evaluate whether or
11 not this is irreparable damages. Essentially, once
12 the bell is rung it's already done. So, from that
13 perspective -- it's going to be a short witness.
14 It's not that exciting.

15 We obviously didn't want to go through
16 all seven. But I didn't think that, you know, one
17 was enough. And also we disposed of some witnesses
18 yesterday.

19 And I forgot to send out an email. I
20 actually typed up one on my computer and I put it
21 in the brief that I eliminated some names and added
22 hers. It's my fault.

23 MS. BUTCHER: There are two children
24 that we seek to call. And being that they are
25 parties, I don't think it's a shocking surprise.

1 THE COURT: Well, it's not a shocking
2 surprise, but it may be unfair and prejudicial to
3 the other side, not being able to prepare.

4 Were there any kind of medical
5 documentation that was given to the other side as
6 to this kind of irreparable damage that you're
7 claiming here?

8 MR. BUTCHER: No, Your Honor. This is
9 all, you know, just essentially the traumatization
10 with the State.

11 Your Honor, they took no depositions.
12 So it's hard for them to say, oh, we didn't have a
13 chance to prepare. They've known about this case
14 since 2017. They've known that there's six
15 children. I'm just --

16 THE COURT: All right. Let's keep it
17 brief, as far as just limited to whatever
18 irreparable damages she's claiming.

19 MS. BUTCHER: Thank you, Your Honor.

20 THE CLERK: Would you please raise your
21 right hand. State your full name, for the record.

22 THE WITNESS: My name is **A.R.M. A.R.M. A.R.M.**

23 THE CLERK: Do you swear or affirm to
24 tell the truth, the whole truth, and nothing but
25 the truth so help you God?

1 THE WITNESS: Yes.

2 **A.R.M. A.R.M. A.R.M.**

3 DIRECT EXAMINATION

4 BY MS. BUTCHER:

5 Q. **A.R.M. A.R.M.** how old are you?

6 A. I am 10 years old.

7 Q. And what's your relationship to -- with
8 Kaci May sitting here?

9 A. She is my mother.

10 Q. And you know what a lie is; correct?

11 A. Yes.

12 Q. And you understand that you're under
13 oath here today?

14 A. Yes.

15 Q. You understand that you have to tell
16 the truth?

17 A. Yes.

18 Q. And that's what you swore to do;
19 correct?

20 A. Yes.

21 Q. How old are you?

22 A. I am 10 years old.

23 Q. And what grade are you in, presently?

24 A. I am fifth grade next week.

25 Q. Where do you go to school?

1 A. I am home schooled.

2 Q. And when did that start?

3 A. It started in second grade, after New
4 Year's, I think.

5 Q. And do you know why you're home
6 schooled?

7 A. Yes.

8 Q. Why?

9 A. Because I didn't like being in school
10 when people kept pulling me out. And I didn't like
11 being pulled out of class. I just wanted to be in
12 class and learn.

13 Q. And who actually was pulling you out?

14 A. It would be like a teacher, and then
15 she would take me to the office.

16 Q. And what was the purpose of going to
17 the office?

18 A. To talk to DSS.

19 Q. Okay. Do you remember the name of the
20 person you talked to? Were there different people?
21 Or do you remember?

22 A. They were different people sometimes.

23 Q. Did you have friends at your other
24 school?

25 A. Yes.

1 Q. Do you miss being in class with those
2 friends?

3 A. Yes.

4 Q. Do you remember how often you were
5 pulled out of class?

6 A. I was probably pulled out three or two
7 times.

8 Q. But do you remember exactly?

9 A. No.

10 Q. All right. And before you talked to
11 these people, did anyone from the school tell you
12 you did not have to speak to these people from DSS?

13 A. No.

14 Q. Did anyone from DSS tell you you did
15 not have to speak with them?

16 A. No.

17 Q. And you said that you were pulled out
18 of class. Were you actually in class learning?

19 A. Yes.

20 Q. Okay. Were there other times when you
21 weren't in class learning that you were pulled at?
22 Or do you recall?

23 A. I don't know exactly.

24 Q. Did the school tell you who you were
25 being pulled out to talk to before you went into

1 the room to talk to that person?

2 A. No. No.

3 Q. Tell me how that went. What did they
4 say to you?

5 A. They said somebody came to talk to you.
6 And I just said, okay.

7 Q. Were you given a choice whether or not
8 to meet that person?

9 A. No.

10 Q. Were you told that you could call your
11 mother and talk to her about it first?

12 A. No.

13 Q. When you were talking to the person
14 from DSS, did you feel that you were free to leave?

15 MR. DAVIDSON: Your Honor, objection.

16 She's starting -- I understand she's 10 years old,
17 but this is getting really leading.

18 THE COURT: Don't lead the witness.

19 BY MS. BUTCHER:

20 Q. How did you feel when you were placed
21 in that room to talk to the person from DSS?

22 A. I didn't feel comfortable. I just
23 didn't like talking to them. I just wanted to be
24 in class and do stuff, like recess or PE and stuff.

25 Q. Did you tell your mother that DSS would

1 come to the school and talk to you?

2 A. Yes.

3 Q. And what did she tell you?

4 A. She told us that we did not have to
5 talk to them.

6 Q. Okay. Did you talk to DSS still after
7 your mother told you didn't have to?

8 A. Yes.

9 Q. Why?

10 A. Because I just don't like to disobey
11 adults and I don't -- like, I'm uncomfortable when
12 I'm not talking and stuff like --

13 I'm not comfortable when I disobey
14 adults. And I felt like if I didn't talk that
15 something bad would happen, you know.

16 Q. Okay. Do you want to go back to your
17 school?

18 A. Yes.

19 Q. Do you prefer that to being home
20 schooled. Is that what you're saying?

21 A. I like being home schooled, but I also
22 do like being at regular school. Because I can see
23 other kids and be at recess with other kids.

24 Q. Do you know about any plans that you
25 might have when you do return to school? Or do you

1 know about that?

2 A. I probably want to return to school
3 next year, because I want to go to sixth grade.

4 MS. BUTCHER: No further questions.

5 THE COURT: You need to answer any
6 questions that these attorneys might have.

7 Cross examination.

8 CROSS EXAMINATION

9 BY MS. FITIPALDI

10 Q. Can you see me okay?

11 A. Yes.

12 Q. My name is Susan Fitipaldi. I'm an
13 attorney with Halligan, Mahoney & Williams in
14 Columbia, and we represent the School District
15 Number II.

16 I'm just going to ask you a few
17 questions. All right?

18 A. Okay.

19 Q. And you're 10 years old?

20 A. Yes.

21 Q. And you're going to start fifth grade?

22 A. Yes.

23 Q. Okay. Do you remember the first time
24 that DSS came? Were you at Sand Hill Elementary
25 School the first time they came to talk to you?

1 A. I think so, yes.

2 Q. And do you remember the very first time
3 they came to you?

4 A. Not that much.

5 Q. Okay. Do you remember if you were by
6 yourself or with some of your brothers and sisters?

7 A. I think I was with like my brother or
8 sister.

9 Q. Okay. Do you remember which one?

10 A. I know one was with **C.B.M.** that day, I
11 think, and probably **J.H.M.** -- yeah, probably
12 **J.H.M.** or **J.W.M.**.

13 Q. And if we had some records that showed
14 maybe on the first time you were interviewed by
15 yourself, would that sound familiar?

16 A. Maybe, yes.

17 Q. Do you recall much about what happened
18 with the worker on that day at all?

19 A. Not that much.

20 Q. Do you recall who from the school who
21 might have sat in on the interview with DSS?

22 A. Maybe, yes.

23 Q. If you're not sure, that's okay. That
24 was a long time ago. And you were only, what, six
25 years old at the time?

1 A. Seven.

2 Q. Seven, okay. To the best of your
3 recollection, do you know who from the school might
4 have sat in on the interview with you?

5 A. I'm not sure.

6 Q. And then you said you think they
7 visited with you two or three times at the school?

8 A. Yes.

9 Q. So do you recall how long before the
10 second time they came back?

11 A. Probably a week or two weeks, but I'm
12 not sure.

13 Q. And on the second time, do you remember
14 who from the school might have sat in?

15 A. I think it was a woman named Jasmine.

16 Q. Would that be the DSS worker?

17 A. Yes.

18 Q. So how about somebody from the school,
19 was anybody from the school sitting in with you
20 while she talked to you?

21 A. I think, yes. I know somebody at the
22 school talked to us -- with us once or twice. I'm
23 not sure.

24 Q. Okay. And you said after the first
25 time that DSS came to talk to you, you told your

1 mom; is that right?

2 A. Yes.

3 Q. And you were the only one, the records
4 reflect, that talked to DSS on the first day. Did
5 you tell your mom immediately after school?

6 A. Yes. I told my mom that somebody came
7 to talk to me.

8 Q. And what was your mom's reaction?

9 A. She said, okay. Just so you know, you
10 don't have to talk to them, or something like that.

11 Q. Did she tell you you're not allowed to
12 talk to them? Or just that you don't have to, if
13 you don't want to?

14 A. She said you don't have to, if you
15 don't want to.

16 Q. And when they came back a couple more
17 times, you think one or two more times, you did
18 talk with them; is that right?

19 A. Yes.

20 Q. And you felt it was okay to talk to
21 them?

22 A. Not that much. I just don't like to
23 disobey adults. And I just answer the adult's
24 questions.

25 Q. And were you upset during those

1 interviews with DSS?

2 A. Like I felt uncomfortable, but not
3 upset.

4 Q. And were you upset when you got home?

5 A. No. I just told my mom.

6 Q. And she told you, just so you know, you
7 don't have to talk to them anymore; is that right?

8 A. Yes.

9 Q. And do you know if your siblings also
10 spoke with DSS?

11 A. Yes, they did.

12 Q. And did your mom tell them the same
13 thing?

14 A. Yes.

15 Q. And do you know whether any of them
16 spoke to DSS after they were told that they didn't
17 have to?

18 A. I'm not sure.

19 Q. When you were speaking with the DSS
20 worker at the school, how long were those
21 conversations?

22 A. Probably like 30 minutes or something
23 like that.

24 Q. On every occasion?

25 A. I'm not sure.

1 Q. Has your mom recently given you any
2 sort of directive, that if DSS were to ever come
3 back and try to talk to you -- I know that you're
4 in school now. But if they came and tried to talk
5 to you at your home or anywhere else, that you're
6 not allowed to speak with them?

7 A. No. She said, you don't have to, but
8 she said they weren't -- I don't think they were
9 going to come to our house.

10 Q. Do you remember the last time that you
11 talked with anyone from DSS?

12 A. I'm not sure.

13 Q. Do you think it was in maybe -- maybe
14 when you were in second grade?

15 A. Maybe.

16 Q. Do you remember -- so they spoke with
17 you a couple of times. Was it the springtime of
18 your first-grade year? Do you remember that,
19 approximately?

20 A. I think it was March or May.

21 Q. And then you didn't see them again
22 until the next school year; is that right?

23 A. Yes, I think so.

24 Q. And did those meetings with DSS last
25 about 30 minutes?

1 A. I'm not sure.

2 Q. And when you had those meetings, you
3 were with some of your siblings; is that right?

4 A. I think so, yes.

5 Q. And did any of your siblings say, I
6 don't want to talk to them or anything like that?

7 A. Yes. My brother, C.B.M., did say that.
8 And then we left. But they were waiting for my
9 brother, J.W.M. .

10 Q. Okay. But after C.B.M. said, I didn't
11 want to talk to you, that was the end of the
12 meeting?

13 A. Yes.

14 MS. FITIPALDI: I have no further
15 questions at this time.

16 CROSS EXAMINATION

17 BY MR. DAVIDSON:

18 Q. I'm a little slow on my feet.

19 So, what I understand you to say is,
20 your mother told you when you told her that
21 somebody from DSS had come, she told you you don't
22 have to talk to them if you don't want to?

23 A. Yes.

24 Q. Did she tell you why they were coming
25 by?

1 A. Yes, she did tell us.

2 Q. Did she tell you it was because of what
3 J.H.M. had done?

4 A. Yes.

5 MS. BUTCHER: Objection as to
6 relevance, Your Honor.

7 THE COURT: Well, if there's an
8 investigation of child abuse -- I mean, if she
9 knows about it, I think she certainly --

10 MR. DAVIDSON: And the purpose of the
11 meetings, too, Your Honor.

12 THE COURT: I will allow it.

13 BY MR. DAVIDSON:

14 Q. DSS workers were checking to see how
15 you were doing; right?

16 A. Yes. But I didn't really like that.

17 Q. I know that. I never like going to the
18 principal's office either.

19 But when the DSS worker was there, she
20 asked you how you were doing; right?

21 A. Yes.

22 Q. She asked you how was home?

23 A. Yes, she did.

24 Q. She asked if anybody had hurt you?

25 A. Yes.

1 Q. And you said no?

2 A. Yes.

3 Q. And after the DSS worker had checked on
4 you, she asked your other brothers and sisters
5 similar questions to see how they were doing;
6 right?

7 A. Yes, I think so.

8 Q. And y'all were free to go back to
9 class?

10 A. Yeah, I think so.

11 Q. And I assume somebody from the School
12 District took you back to class?

13 A. Yes.

14 Q. Now, I think you said you saw a DSS
15 worker two or three times in the second grade?

16 A. Yes. Well, like two or three times,
17 like in total. I'm not sure in second grade or
18 first grade. I just know that I've seen them two
19 or three times.

20 Q. Since your last visit with the DSS
21 worker, have you seen any other DSS workers?

22 A. I'm not sure.

23 Q. Has anybody come to the house?

24 A. I think they may have come to the house
25 like once.

1 Q. Did you ever speak with them?

2 A. Yes. Mom -- I think mom let them speak
3 with us or something.

4 Q. So your mother gave permission to talk
5 to DSS?

6 A. She said it's okay if you wanted to
7 talk to them, but we don't have to if we don't want
8 to.

9 Q. And you decided that you would go ahead
10 and speak to them; right?

11 A. I'm not sure if I was there or not. I
12 just can't remember. I just know they came to the
13 house once to talk to one of my siblings.

14 Q. And they were checking to see how y'all
15 were doing?

16 A. Yes.

17 Q. Because if I understand right, J.H.M.
18 had hurt your brothers and sisters; had she not?

19 A. She did -- yeah, she did, but...

20 Q. And that caused some concern within
21 your family?

22 A. Yes. But my mother took care of it.
23 And she sent my sister to a hospital when --

24 Q. That's all right. And you have been
25 doing okay?

1 A. Yes.

2 Q. Haven't been to the doctor recently?

3 A. I have been to the doctor. I've been
4 to the dentist.

5 Q. Ever been to a counselor?

6 A. Yes, I have.

7 Q. And do you go to counseling on a
8 regular basis?

9 A. No.

10 Q. And with the counselor, y'all talk
11 about what happened with J.H.M., and things like
12 that?

13 A. Yeah. He talks about how we're feeling
14 and -- like, he talks to us and helps us. If we
15 have any problems, like if we're frustrated or
16 anything, he just says, well then you can do
17 something about it.

18 If it's too bright at night or too dark
19 at a night, just turn on a night light or
20 something.

21 Q. How are you doing today?

22 A. I'm fine.

23 Q. I really appreciate you answering my
24 questions.

25 A. You're welcome.

1 THE COURT: Any redirect?

2 MS. BUTCHER: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. BUTCHER:

5 Q. **A.R.M. A.R.M.** you don't remember exactly
6 how many times you were interviewed by DSS;
7 correct?

8 A. Correct.

9 Q. Do you know how many times DSS came to
10 the school to try to interview you?

11 A. Like I said, probably two or three
12 times.

13 Q. But if you weren't interviewed, would
14 you be aware that they came to school to interview
15 you?

16 MR. DAVIDSON: Your Honor, objection.
17 And, quite honestly, I'm not sure she would be made
18 aware of what happened.

19 MS. BUTCHER: Your Honor, I don't know
20 if somebody from the school told her, hey, DSS was
21 out here to interview you today. So that's why I'm
22 asking the question.

23 THE COURT: You can ask it in an
24 open-ended way, not a leading way, whether or not
25 she has any information.

1 BY MS. BUTCHER:

2 Q. Were you informed of times that DSS
3 came to talk to you and you were not available?

4 A. Yes. But I don't think -- no, because
5 I don't think they came to talk to us. And I
6 wasn't there.

7 Q. Did someone from the school always sit
8 in on the interview that you had with DSS?

9 A. Not always.

10 Q. Okay. And did the person from the
11 school when they did sit in, did they participate
12 in the conversation?

13 A. I'm not sure.

14 Q. Are you aware that DSS kept trying to
15 talk to you for the next 9 or 10 months, after the
16 first time?

17 THE COURT: She's already answered that
18 question, Counsel. You asked her if she was aware
19 of any other attempts.

20 MS. BUTCHER: I was getting to the
21 length of time.

22 THE COURT: All right. She's answered
23 that. Move on.

24 BY MS. BUTCHER:

25 Q. All right. Do you -- you were asked

1 what DSS was -- the types of questions that DSS was
2 asking you. Did they ask you if your parents were
3 fighting?

4 A. Maybe. I'm not sure.

5 Q. Okay. Did they ask you about any
6 sexual abuse in the house?

7 A. I don't think so.

8 Q. Did they ask you if your parents drank
9 or did drugs?

10 A. No, I don't think so.

11 MS. BUTCHER: All right. Thank you.

12 THE COURT: Thank you, honey. You can
13 step down. If you want to put your mask back on,
14 that's over there. Thank you.

15 You may call your next witness.

16 MS. BUTCHER: I call **C.B.M. C.B.M.**

17 THE CLERK: Please raise your right
18 hand.

19 State your full name, for the record.

20 THE WITNESS: **C.B.M. C.B.M.**

21 THE CLERK: Do you swear or affirm that
22 the testimony you are about to give will be the
23 truth, the whole truth, and nothing but the truth,
24 so help you God?

25 THE WITNESS: Yes.

1 THE COURT: Your witness.

2 DIRECT EXAMINATION

3 BY MS. BUTCHER:

4 Q. C.B.M., how old are you?

5 A. I'm 12.

6 Q. Do you know the difference in the truth
7 and a lie; correct?

8 A. Yes, ma'am.

9 Q. Do you understand that you have sworn
10 to tell the truth here today?

11 A. Yes, ma'am.

12 Q. And you will tell the truth today;
13 correct?

14 A. Yes, ma'am.

15 Q. Okay. Where do you currently go to
16 school?

17 A. I go to school at Gregg.

18 Q. Is that where you are right now?

19 A. Yes, ma'am.

20 Q. Do you like it there?

21 A. Yes, ma'am.

22 Q. Do you recall back in 2017 when DSS was
23 trying to talk to you at your school, at that time?

24 A. Yes, ma'am.

25 Q. Okay. How did that make you feel?

1 A. Well, when they started doing it more
2 and more, I felt nervous, like that my siblings
3 wouldn't be on the bus when I came home.

4 Q. What do you mean by they might not be
5 on the bus when you came home?

6 A. Like when DSS would go and talk to them
7 into the office, and they wouldn't be on the bus.

8 Q. Why wouldn't they be on the bus? I'm
9 not quite following you. Can you explain better?

10 A. Because DSS would call them and they
11 wouldn't be able to get to the bus, because DSS was
12 talking to them or something.

13 Q. Okay. Now, did you -- when DSS -- how
14 did it go? Did someone from the school call you to
15 the office? Explain that to me.

16 A. Someone in the office called me into
17 the office and said -- just called me to come into
18 the office, and someone had to talk to me.

19 Q. Did the school tell you who it was that
20 you were going to be talking to?

21 A. No, ma'am.

22 Q. Did the school give you a choice about
23 whether or not you wanted to talk to the person?

24 A. No, ma'am.

25 Q. So did you feel like you had a choice

1 as to whether or not you had to speak to anyone?

2 A. No, ma'am.

3 Q. So when you went in to speak with the
4 person from DSS, how did that go?

5 A. They asked me questions about my family
6 and how I was doing.

7 Q. Okay. Did they tell you who they were?

8 A. No, ma'am.

9 Q. Did they tell you why they were asking
10 you these questions?

11 A. No, ma'am.

12 Q. Did they tell you that you did not have
13 to answer their questions?

14 A. No, ma'am.

15 Q. Did you tell your mother after the
16 first time this happened?

17 A. Yes, ma'am.

18 Q. Tell me about that conversation.

19 A. I told her that someone had come to
20 talk to me. And that she said if it is DSS, you do
21 not have to talk to them, if you do not want to,
22 but you can still talk to them if you want to.

23 Q. Okay. Did you still talk to them after
24 that?

25 A. The second time, I didn't, but the

1 third time I think I did.

2 Q. Was there a reason that you decided to
3 talk to them that third time?

4 A. Well, I'm not really sure. I can't
5 remember. But I only remember that I talked to
6 them the third time, and not the second time. And
7 I talked to them the first time.

8 Q. Now, when you were called in to talk to
9 these people, were you called out of class?

10 A. Yes, ma'am.

11 Q. Each time?

12 A. I cannot remember all the times, but
13 the times I can remember, I do remember being
14 called out of class.

15 Q. When you went back to class, were you
16 asked about why you were called to the principal's
17 office?

18 A. Yes, ma'am.

19 Q. By who?

20 A. My friends.

21 Q. How did that make you feel?

22 A. Well, I didn't really know what to say.
23 I just said that people called me out to talk to
24 me. And they kept coming back and calling me back.

25 Q. Okay. Do you remember the type of

1 questions they asked you?

2 A. They asked me how I was doing, was I
3 treated well in my family, was I hurt, did I go to
4 the hospital when I needed to. Questions like
5 that.

6 Q. Okay. Did they ask you if anybody in
7 your home used drugs?

8 A. Yes, ma'am.

9 Q. Did they ask you if your parents got in
10 fights?

11 A. Yes, ma'am.

12 Q. Did they ask you if your parents left
13 bruises on you?

14 A. I think so.

15 Q. How did that make you feel?

16 A. Well, it made me feel like, why are
17 they calling me here. I don't know why the first
18 time. And then the next times I knew that they
19 were calling me here to find out about my family.

20 Q. And each time, did you tell them things
21 were all good at the house?

22 A. Yes, ma'am.

23 Q. Did you feel like you could have gotten
24 up and walked out of that interview?

25 A. No, ma'am.

1 Q. Why did you feel that way?

2 A. Because they kept talking to me and
3 they didn't say that I could. They never said that
4 I had an option to talk to them. They just started
5 talking to me.

6 Q. If you had had a choice, would you have
7 talked to DSS?

8 A. Some. I would answer some of their
9 questions.

10 Q. Are you worried that DSS may come back
11 to your school and still try to talk to you?

12 MR. DAVIDSON: Objection.

13 THE COURT: I'll allow it.

14 MS. BUTCHER: Thank you.

15 BY MS. BUTCHER:

16 Q. Go ahead.

17 A. Yes.

18 Q. How does that make you feel?

19 A. I know that I don't have to talk to
20 them now. So I don't really care if they come to
21 talk to me.

22 It's just more that they call me out of
23 class. And I'm always asked when I come back why
24 were you called out of class.

25 Q. And do you worry that your friends

1 would find out why you were called out of class?

2 A. I did not worry about it, because I
3 know my family is fine. And I don't care if they
4 talk behind my back, as long as I don't hear it.

5 MS. BUTCHER: No further questions.

6 THE COURT: Cross examination.

7 CROSS EXAMINATION

8 BY MS. FITIPALDI

9 Q. Hi, **C.B.M.** How are you?

10 A. I'm doing well.

11 Q. My name is Susan.

12 A. Hello, Susan.

13 Q. I'm just going to ask you a few
14 questions. Okay.

15 A. Okay.

16 Q. You look very nice today.

17 Do you recall how many times DSS came
18 to talk to you when you were in -- you were in
19 third grade back then; right, the first time they
20 came to see you in the spring of 2017?

21 A. Yes, ma'am, I think so.

22 Q. Do you remember how many times they
23 came to talk to you?

24 A. I'm not sure, but I can remember three.

25 Q. If the records show that DSS came twice

1 that school year, would that sound about right to
2 you?

3 A. Yes, ma'am.

4 Q. And the first time you talked to DSS,
5 was the it the day after that your sister, **A.R.M.**
6 **A.R.M.** spoke with DSS? Do you remember?

7 A. I do not remember.

8 Q. Did you know that **A.R.M. A.R.M.** had been
9 spoken to by DSS the day before you were
10 interviewed?

11 A. No, ma'am.

12 Q. Nobody told you about that?

13 A. No, ma'am.

14 Q. And when you were interviewed by DSS,
15 the very first time, were you with any of your
16 brothers or sisters? Was **J.R.M.** with you?

17 A. I don't think so. I'm not sure.

18 Q. What about **J.H.M.**, was she with you?

19 A. I don't know.

20 Q. Okay. You don't remember.

21 Do you remember a time when DSS came to
22 speak with you and **J.H.M.** was with you and she
23 refused to talk to DSS? Do you remember that?

24 A. No, ma'am.

25 Q. So it was just the two times, you

1 think, in your third grade year?

2 A. Yes, ma'am.

3 Q. So they weren't really pulling you out
4 all the time to speak with people from DSS; right?
5 Just twice?

6 A. Right. Well, twice that I was there.
7 That's all I know.

8 Q. And then the next school year when you
9 were in fourth grade, do you remember them coming
10 to talk to you again?

11 A. Yes, ma'am.

12 Q. And do you know about how many times
13 that was?

14 A. I can remember one time.

15 Q. And were you with any of your brothers
16 or sisters during that interview?

17 A. I do not think so.

18 Q. Do you remember how long on the last
19 occasion you were with DSS?

20 A. 20 minutes.

21 Q. And on that first occasion, do you
22 remember how long that interview was?

23 A. I do not.

24 Q. And your mom told you -- was it after
25 the very first time you spoke with DSS that you

1 told your mom about it?

2 A. Yes, ma'am.

3 Q. And you told your dad, too?

4 A. Yes, ma'am.

5 Q. And they told you that you didn't have
6 to talk to DSS; is that right?

7 A. Yes, ma'am.

8 Q. And that you could if you wanted to; is
9 that right?

10 A. Yes, ma'am.

11 Q. So when they came back a second time,
12 did you choose to speak with them?

13 A. I did not. I don't think I did.

14 Q. You refused to talk with them when they
15 came back that second time?

16 A. Yes, ma'am.

17 Q. And that's all right. That's your
18 right to do; right?

19 A. Yes.

20 Q. Do you recall who from the school might
21 have sat in, if anyone, during those DSS
22 interviews?

23 A. The guidance counselor, maybe.

24 Q. Do you remember her name?

25 A. No, ma'am.

1 Q. And I'm not sure -- I'm sorry if I
2 asked you this, because I don't remember your
3 answer.

4 Do you remember sitting in on those DSS
5 meetings with your siblings? Or do you think you
6 were alone? Or do you just not remember?

7 A. I think once I had my siblings in the
8 room, but other times I do not remember.

9 Q. And was **J.R.M.** in with you?

10 A. I do not know.

11 Q. Ms. Butcher asked about whether DSS
12 asked you about if your mom or dad left bruises on
13 you. Do you remember that question?

14 A. Yes, ma'am.

15 Q. And did that ever happen?

16 A. No, ma'am.

17 Q. Do you remember **J.R.M.** telling DSS that
18 sometimes when you were in trouble, your parents
19 would either use a wooden paddle or a belt on the
20 older kids for corporal punishment, and then
21 sometimes it would leave red marks or bruises for a
22 few days?

23 A. It wouldn't leave bruises for a few
24 days. It would just sting for a little while. And
25 it wasn't abusive.

1 Q. That's not my question. I'm trying to
2 find out --

3 MS. BUTCHER: Your Honor, that's been
4 asked and answered. He's entitled to full answers.

5 THE COURT: She asked does he remember
6 what it was. He answered a different question.

7 Just repeat the question.

8 BY MS. FITIPALDI:

9 Q. I'm just trying to find out, **C.B.M.**, if
10 you remember **J.R.M.** telling DSS about punishments
11 at home and things, including getting whippings?

12 A. I do not.

13 Q. But that is something that happened in
14 your household; correct?

15 A. Yes, ma'am.

16 Q. And just the older kids, they would be
17 hit with a belt?

18 A. They would be spanked, not hit.

19 Q. And you said that it would be sore a
20 little, but it would not leave a bruise; is that
21 right?

22 A. Yes, ma'am.

23 Q. And did you tell DSS about that? I
24 know **J.R.M.** did, but did you tell them about it?

25 A. I answered their questions about did

1 your parents beat you, and did they leave bruises.

2 And they did not leave bruises.

3 Q. Have you been instructed by your mom
4 recently that if DSS were to come to school to talk
5 with you that you are not to speak with them?

6 A. No, ma'am.

7 Q. What is your understanding of whether
8 you can talk to DSS, if they come to school?

9 A. I can talk to them, if I want. And I
10 can also not talk to them, if I want. I have a
11 choice.

12 Q. Okay. And you said a minute ago that
13 you wouldn't mind answering some questions; is that
14 right?

15 A. That is right.

16 Q. Were you upset after those interviews
17 with DSS at school?

18 A. No.

19 MS. FITIPALDI: I have no further
20 questions, Your Honor. Thank you.

21 THE COURT: Cross examination.

22 CROSS EXAMINATION

23 BY MR. DAVIDSON:

24 Q. **C.B.M.**, I'm going to hobble around and
25 talk to you for a second.

1 A. All right.

2 Q. I think you told Counsel -- you were at
3 Sand Hill when DSS came to see your brothers and
4 sisters?

5 A. Yes, sir.

6 Q. And you told your mother about the
7 visits?

8 A. Yes, sir.

9 Q. And she told you can could talk to DSS
10 if you wanted to or not?

11 A. Yes, sir.

12 Q. And did she tell you -- were you there
13 when she told **A.R.N A.R.M.** why DSS was coming by to
14 talk to you while at school?

15 A. Yes, sir.

16 Q. So you knew that DSS was trying to make
17 sure that everything was okay at the house; right?

18 A. No. DSS was trying to find -- dig up
19 dirt and try to take everybody away.

20 Q. So that's what your mother said?

21 A. And trying to prove that our family was
22 bad, but they aren't.

23 Q. Is that what your mother told you?

24 A. Yes.

25 Q. Now, you are now at Gregg?

1 A. I was at Sand Hill, and now I am at
2 Gregg.

3 Q. How many years have you been at Gregg?

4 A. Just one year.

5 Q. Full year?

6 A. Full year.

7 Q. I assume that you had to leave because
8 of the virus?

9 A. Yes.

10 Q. And that would have started when you
11 were in fifth grade?

12 A. I went to Gregg when I was in the sixth
13 grade.

14 Q. Eighth grade. So fourth grade, I think
15 you think you said, you saw a DSS worker that fall
16 around November, sometime in November; is that
17 right?

18 A. I think so.

19 Q. And you don't remember whether you
20 talked to the worker or not; correct?

21 A. Correct.

22 Q. And then from that point on, nobody has
23 come to Sand Hill and pulled you out to talk to a
24 DSS worker, nor has that happened at Gregg;
25 correct?

1 A. I don't think so.

2 Q. Well, you haven't talked to anybody at
3 DSS while you've been at Gregg?

4 A. No, sir.

5 MR. DAVIDSON: Thank you, **C.B.M.** I
6 appreciate it.

7 THE COURT: Any redirect?

8 MS. BUTCHER: Briefly.

9 REDIRECT EXAMINATION

10 BY MS. BUTCHER:

11 Q. Now, you said that there were two times
12 that you were pulled out?

13 A. In third grade, I think, I was pulled
14 out three times.

15 Q. Thank you. And were you aware that DSS
16 for 9 or 10 months, after that initial interview,
17 kept coming back, trying to talk to you?

18 A. Yes, ma'am.

19 Q. So how did that make you feel, that
20 they kept coming back?

21 A. Well, it made me feel that something
22 was wrong, because they kept coming back after I
23 said everything was fine the first time.

24 Q. And you would actually tell them that
25 you didn't want to talk to them, correct?

1 A. The second time I told them I don't
2 want to talk to them. The third time I think I
3 talked to them.

4 Q. Now -- and I don't think I asked you
5 this, but to make sure, did someone from the school
6 always sit in on when you had interviews with DSS?

7 A. I think they did sometimes, but I'm not
8 sure about always. They may have but...

9 Q. Do you recall if they participated in
10 the conversations?

11 A. I don't think they participated. I
12 think they just watched.

13 MS. BUTCHER: Okay. Thank you.

14 THE COURT: Thank you, **C.B.M.**. You can
15 step down.

16 You can call your next witness.

17 MR. BUTCHER: Marion Baird, Doctor.

18 THE CLERK: Please raise your right
19 hand. State your name, for the record.

20 THE WITNESS: Marion Donald Baird.

21 THE CLERK: Do you swear or affirm that
22 the testimony you are about to give will be the
23 truth, the whole truth, and nothing but the truth,
24 so help you God?

25 THE WITNESS: I do.

1 THE COURT: Your witness.

2 DIRECT EXAMINATION

3 BY MR. BUTCHER:

4 Q. Dr. Baird, you've already stated your
5 name. Where are you employed?

6 A. Dorchester School District II.

7 Q. And what is your current position at
8 the School District?

9 A. I'm assistant director for the
10 elementary schools.

11 Q. How long have you had that job?

12 A. One year.

13 Q. All right. And before that, what was
14 your position?

15 A. I was an elementary principal at Sand
16 Hill Elementary School and Knight Hill Elementary
17 School.

18 Q. So how long before Sand Hill and -- or
19 is Knight Hill and Sand Hill the same?

20 A. They are two different schools. I was
21 principal at Knight Hill Elementary from 2009 to
22 2016, and when the School District opened a new
23 school, Sand Hill Elementary, and I was principal
24 there from 2016 to 2019.

25 Q. And before that, were you in

1 administration?

2 A. I was assistant principal at Beach Hill
3 Elementary School. And I was also a teacher in
4 Newark, New Jersey.

5 Q. Where -- and I apologize. Let me get
6 the words.

7 What is your undergraduate degree in?

8 A. My Undergraduate Degree is in History
9 and English, Master's in Educational
10 Administration, and a Doctorate in Educational
11 Leadership.

12 Q. Have you done any post-opt work?

13 A. Yes.

14 Q. Are you familiar with the policies and
15 produces of the School District?

16 A. Yes, mostly.

17 Q. All right. And, in fact, when you were
18 a school principal, you were essentially the school
19 superintendent's -- you were the ones who -- you
20 enforced the School District policies and
21 procedures, and whatever guidance you got from the
22 school superintendent; right?

23 A. And the School Board, yes.

24 Q. All right. And going to -- are you
25 familiar with the policy JIH Student Interrogation,

1 Searches, and Arrests?

2 A. Yes.

3 Q. And did you have to deal with that
4 policy at all when you were at the -- while you
5 were a principal at Sand Hill Elementary?

6 A. I do not recall an instance. Usually
7 at an elementary level, we do not have to deal with
8 that problem.

9 Q. All right. Mainly elementary kids
10 aren't getting in trouble with the cops so much?

11 A. Mostly, yes.

12 Q. I'm going to hand you Exhibit 19, and
13 ask if you're familiar with these documents at all?

14 A. I am familiar with the Board Policy,
15 yes.

16 Q. And on the first page it talks about
17 interrogations by law enforcement. And would you
18 read to the Court what that policy says under
19 interrogation by law enforcement?

20 A. Do you want me to read the entire
21 policy?

22 Q. Yes, sir. Just that paragraph.

23 A. When law enforcement officers find it
24 necessary --

25 MR. DAVIDSON: Objection. This isn't a

1 law enforcement case. I don't know what the policy
2 with relevance --

3 MR. BUTCHER: Your Honor, I think the
4 relevance is a comparator when the State comes in
5 and wants to interrogate children, that this School
6 District actually takes precautions to protect the
7 child, inform the parents, and protect the family.

8 So from that prospective, when DSS and
9 the School District says -- you know, when the
10 School District says, we're going to let DSS come
11 in and interrogate children wholesale, and they
12 can't look after a child's 4th Amendment's
13 protection, and a family 1st Amendment's
14 protection, then I think there's some problems with
15 that representation to the Court.

16 MR. BARLOW: And, Your Honor, I'll join
17 the objection for the record.

18 THE COURT: And, for the record,
19 Mr. Butcher, this isn't a law enforcement
20 interrogation. It's a DSS and a School District
21 issue.

22 This is dealing with interrogation of
23 potential crimes by the person who is being
24 interrogated, i.e., the child.

25 But that's not what happened here.

1 This is not relevant. Let's move on.

2 Objection is sustained.

3 MR. BUTCHER: Thank you, Your Honor.

4 BY MR. BUTCHER:

5 Q. Mr. Baird, in the past -- isn't it true
6 that you stated before that DSS does not need
7 permission from the school to interview students?

8 A. I have stated that, yes. We don't give
9 them permission to interview. They are -- from my
10 understanding, they are authorized to interview
11 children at appropriate times.

12 Q. Who authorizes it?

13 A. I'm assuming DSS or law enforcement.
14 I'm not sure.

15 But according to what I have been
16 taught to practice in protocol, DSS can come into a
17 school and interview children.

18 Q. And can they come everyday and
19 interview the same child?

20 A. I don't ever recall them doing that,
21 and I've never had to face that. So I don't know.

22 Q. But if they did?

23 A. I would seek guidance from the District
24 Attorney.

25 Q. Would they come and interview every

1 child in a class?

2 A. I've never seen that happen. And I
3 don't -- I have no experience with that.

4 So I would seek guidance from our
5 District Attorney, if I had questions.

6 Q. But as the policy is today, could they
7 go to the school and interview a child every day?

8 MR. BARLOW: Objection; Your Honor.
9 There's no foundation for that happening.

10 THE COURT: Counsel, what's relevance
11 to this particular case? Did they ask every child
12 in these children's class to be interviewed?

13 MR. BUTCHER: What's relevance -- what
14 is relevant is the policy as it stands, that there
15 is no judicial check or balance.

16 THE COURT: There's a statute that
17 outlines exactly when DSS and law enforcement can
18 come. So if he knows about that, you can ask him
19 about that.

20 But just to do a blanket statement that
21 he doesn't have a response authority, that he would
22 seek legal guidance.

23 You have asked him. He's answered.
24 And let's go on to the next question.

25 MR. BUTCHER: All right.

1 BY MR. BUTCHER:

2 Q. And does the School District ask DSS
3 why they are there to interview a child?

4 A. Not to my knowledge.

5 Q. Do you have any knowledge of this
6 statute that it's based on -- that the policy is
7 allowing DSS to come talk to kids is based on?

8 A. I don't know the policy number or
9 statute or anything like that, but I know through
10 trainings over the years that we have been advised
11 to allow DSS to interview children, if they see a
12 need. We don't investigate, as school officials,
13 any allegations of abuse or negligent.

14 Q. If the statute -- do you have any
15 knowledge as to whether or not DSS can come and
16 interrogate children after the investigation?

17 MR. BARLOW: Objection, Your Honor, to
18 interrogate. And he's asking a legal question.

19 THE COURT: I'll allow it.

20 BY MR. BUTCHER:

21 Q. Go ahead.

22 A. I've never observed a DSS caseworker
23 interrogate anyone. I have observed conferences
24 and questions.

25 And can you repeat the question?

1 Q. We'll just call it an interview, how
2 about that?

3 A. Sure.

4 Q. Have you ever -- has DSS -- I mean, do
5 you ask if DSS has -- is conducting an
6 investigation, when they come to interview a child?

7 A. I do not ask all the time.

8 Q. Okay. Were you aware that the Statute
9 does not contemplate DSS interviewing children at
10 school, outside of an investigation?

11 A. What do you mean by contemplate?

12 Q. It doesn't say that they can interview
13 children, outside of an investigation?

14 A. I don't know.

15 Q. As an administrator, is it your intent
16 to follow the law?

17 A. Of course.

18 Q. All right. If the statute says that
19 DSS can't -- or that they can only interview the
20 children during an investigation, would you want
21 your School District to follow the law?

22 A. Of course, yes.

23 Q. Are you aware that an investigation can
24 last 45 days or possibly 60 days, with an
25 extension?

1 A. Yes.

2 Q. All right. And do you know how long --
3 if the investigation started in March of 2017, do
4 you know how long they lasted?

5 A. Well, I'm assuming 45 to 60 days, if
6 they're allowed access to the family and to the
7 children. If they're denied access to the family
8 and children, I think it may last longer.

9 Q. And do you know what you base that off?

10 A. Experience.

11 Q. But no knowledge of DSS policy or the
12 law?

13 A. No, I don't know DSS policy.

14 Q. Because earlier you said you're not
15 familiar with the law; correct?

16 A. I am not familiar with the details of
17 that statute. I'm not a lawyer.

18 Q. Understood. I'm not either.

19 And you're aware that the interviews of
20 the children lasted until November of 2017?

21 A. Yes, that's what we have documented.

22 Q. When Kaci May wouldn't let DSS into her
23 house, did DSS call you and ask you how the
24 children were doing?

25 A. I don't recall.

1 Q. Did you ever voluntarily call DSS and
2 tell them what was happening with Kaci May or her
3 children?

4 A. No, I don't believe.

5 I recall Ms. May calling me and telling
6 me that she would not allow DSS to come onto her
7 property. I recall explaining the difference
8 between Windwood Farms and DSS -- or Windwood
9 Agency and DSS to Ms. May.

10 Q. I don't understand that.

11 A. I think DSS, from my understanding,
12 farmed the case of the investigation out to
13 Windwood Agency.

14 And they went to the home. And Ms. May
15 said, these people aren't allowed on my property.
16 I'm not allowing them here. And then I think
17 that's when DSS picked it back up, from my
18 understanding.

19 Q. Was Windwood Farms (sic), were they
20 involved maybe in November of '16?

21 A. I don't know. I can't recall.

22 Q. Okay. All right.

23 A. That would make sense, if that was the
24 first report for the toy throwing.

25 MR. BUTCHER: Give me one second.

1 THE COURT: Yes, sir.

2 BY MR. BUTCHER:

3 Q. Were you present the first time DSS
4 came to meet with the children on March 29th, 2017?

5 A. Possibly. I don't recall. It would
6 either be myself, or a school counselor, or an
7 assistant principal.

8 Q. Were you aware that J.H.M. asked to
9 see her -- to have her mother present when she
10 spoke with DSS?

11 A. I do recall her asking for her mother,
12 or asking to call her mother, which was typical any
13 time I spoke with J.H.M.

14 Q. Okay. And did you tell her she
15 couldn't talk to her mother?

16 A. I probably said something to the effect
17 of in a few minutes we'll call your mom.

18 That's always my typical practice. If
19 a child wants to speak to their parent, usually I
20 give them a minute to catch their breath.

21 I don't recall, specifically, J.H.M.
22 However, J.T.M., any time there was an issue he
23 would want to call his mom. And the mom informed
24 me for any behavior issues, non-sexual related to
25 call Mr. Warren and not her.

1 Q. Okay. And were you aware that J.H.M.
2 specifically wanted to talk to her mom because DSS
3 was there and she wanted her to be there?

4 MR. BARLOW: Objection, Your Honor. I
5 don't think he knows what J.H.M. wanted.

6 THE COURT: He said that.

7 THE WITNESS: I don't know.

8 THE COURT: He said he didn't know.

9 BY MR. BUTCHER:

10 Q. Now, does the school just give DSS
11 school records when they show up? Or do they have
12 to have a release?

13 A. If there's a court order signed by a
14 judge, of course, we will provide any
15 documentation. If a guardian ad litem provides a
16 signed order by a judge, we will provide documents.

17 We may provide attendance history, just
18 so if that is part of their information. But I
19 don't recall giving any records by attendance that
20 they may say is John here today. And I would say
21 yes or no, so...

22 Q. And you all -- and the School District
23 has had an obligation to work with DSS on truancy
24 issue; correct?

25 A. If it gets to that level, yes.

1 Q. But that doesn't mean that they can
2 just hand over disciplinary records, any school
3 records; correct?

4 A. I don't think we do.

5 Q. Do you know how DSS ended up with
6 school records without a release, during that time
7 period?

8 A. I do not.

9 Q. And would that be a violation of FERPA,
10 if your school did give them disciplinary records
11 and that sort of stuff?

12 MR. BARLOW: Objection --

13 MR. DAVIDSON: Object to the form.
14 This person knows nothing about legal opinions.

15 THE COURT: He already testified that
16 he doesn't know, so he wouldn't give a legal
17 opinion any way, Counsel.

18 BY MR. BUTCHER:

19 Q. Would that violate the school's policy,
20 regarding records, student records?

21 A. I don't know.

22 Q. Are you familiar with the policy at
23 all?

24 A. I'm familiar.

25 We also provide contact information, if

1 there's a pending EPC or the child may be in
2 danger. So we would provide that to law
3 enforcement and DSS.

4 Q. Okay. Was there ever a pending EPC, in
5 this matter?

6 A. Not that I'm aware of.

7 Q. And was there anybody to indicate that
8 the children were in danger to you?

9 A. I felt the children were in danger.

10 Q. During the whole time period?

11 A. Maybe not physical. Negligent,
12 definitely, and definitely mental, and traumatic
13 experiences for their mental capacity.

14 Q. Okay.

15 A. I was also worried about the mother's
16 mental health.

17 Q. Did you ask law enforcement to EPC?

18 A. No.

19 Q. If you thought they were in danger
20 going home, why didn't you tell those facts to law
21 enforcement and say, you need EPC and protect
22 these --

23 A. I don't direct law enforcement.

24 Q. Pardon me?

25 A. I don't direct law enforcement. I give

1 them our concerns. And law enforcement doesn't
2 decide EPC. I thought that was DSS. Isn't that
3 the law?

4 Q. I can't really answer that. You can
5 talk to your lawyers about that later.
6 Ms. Fitipaldi knows it pretty well.

7 A. Okay.

8 Q. Deputy Pryor was your SR and school
9 resource officer?

10 A. Yes, sir, school resource officer.

11 Q. Did you ever tell him these -- whatever
12 facts were that you children should be EPC'd?

13 A. I don't ever remember saying they
14 should be EPC'd.

15 Q. Did you ever tell them the facts that
16 you thought serious enough for a child being taken
17 into emergency protective recovery?

18 A. I remember sharing the facts that my
19 concerns with the mother's mental health, and any
20 trauma that may be inflicted upon the children
21 because of that.

22 Q. And the children were taken into EPC?

23 A. Not to my knowledge.

24 Q. And was that in March of 2017?

25 A. That they weren't in EPC?

1 Q. That you passed this information to the
2 SRO?

3 A. I don't recall.

4 Q. All right. Do you know how many times
5 you passed this information on to law enforcement
6 that you thought it should have happened?

7 A. I don't know. I don't think there was
8 a number of times when I said these children should
9 be EPC'd.

10 Q. All right. How about when you passed
11 the information on to law enforcement hoping they
12 would react?

13 A. What's the question?

14 Q. I mean, so you're saying that you had
15 some grave concerns about the children's safety and
16 wellbeing; right?

17 A. Their mental safety and mental ability,
18 yes.

19 Q. We're going to pile it all together
20 into whatever it is, where you thought the children
21 should have been EPC'd; correct?

22 A. I didn't say that they should have been
23 EPC'd.

24 Q. Okay.

25 A. I don't have the authority to make that

1 determination.

2 Q. I understand. There is -- there's a
3 point -- as a mandatory reporter, where you have to
4 report some abuse and neglect; correct?

5 A. A suspicion of abuse and negligent. We
6 don't investigate.

7 Q. I understand. But if you have a
8 suspension of abuse and negligent that a caregiver
9 is causing some sort of harm to a child or allowing
10 then to be harmed, then you have to report;
11 correct?

12 A. Yes.

13 Q. One second. I want to protect you and
14 DSS here.

15 MR. BUTCHER: All right. Your Honor,
16 I'm framing this -- and I'm sure the Court will
17 give me guidance.

18 BY MR. BUTCHER:

19 Q. Sir, I don't want to violate the
20 reporting requirement or anything. I'm not asking.
21 And I don't really -- it's not really important as
22 to who reported the DSS case.

23 But do you know how many times you
24 reported to law enforcement or anybody else your
25 concerns regarding the children's safety and

1 wellbeing that -- as a mandatory reporter had to
2 report?

3 A. Several times.

4 Q. And the children, to your knowledge,
5 were never EPC'd; correct?

6 A. To my knowledge, correct.

7 Q. Let me go back to September. On
8 September 19, 2017, did you assist Ms. Jasmine --
9 is it Flemister -- in interviewing the children?

10 A. I sat in on the conference.

11 Q. And why do you call it a conference?

12 A. Because it's a conversation, how are
13 you doing.

14 Q. Did the children have a choice of being
15 removed from class and coming to it?

16 A. I mean, they could refuse.

17 Q. All right. So they wouldn't have been
18 written up, or received detention, or anything if
19 they refused to leave class and come to the
20 principal's office be interrogated by DSS?

21 A. I think it would be a case-by-case. It
22 depends on the behavior. You know, if the child
23 says, I'm not comfortable speaking with anybody --

24 You know, we wouldn't go to a class and
25 say, hey, DSS is here to speak with you. We would

1 say, you know, Ms. So and So, can you send **C.B.M.**
2 to the front office.

3 Q. What if they said, no, I'm not coming?

4 A. Then I would go down there and say,
5 hey, why aren't you coming.

6 Q. What if they get to there and they see
7 it's DSS and they say, I'm going back to class and
8 not talking to this woman?

9 A. It just depends on a case-by-case
10 basis.

11 Typically, once the children sat down,
12 and the caseworker introduces themselves, they
13 would say, my mom told me not to talk to you.

14 Q. Okay. But they have to come in and sit
15 down?

16 A. Yes. I'll say -- I wouldn't say they
17 have to. You know, I'm not going to wrestle a
18 child and pull them into a room. But, you know,
19 we'll ask them. And if they refuse, there may be a
20 referral.

21 Q. Okay. So a child can be punished for
22 refusing to talk to DSS?

23 A. No. A child can be punished for
24 refusing to talk to an adult to following a
25 directive from an adult. So the punishment would

1 not -- the issue is not refusing to talk to DSS.

2 It's disobeying a teacher.

3 Q. It's kind of splitting hairs, if a
4 child refuses; right?

5 A. It's a case-by-case issue. If I said,
6 hey, I need you to come here, and the child sits at
7 the desk, crosses their arms, and says no, that's
8 defiance and that's refusal to obey.

9 If a child says, I do not talk to DSS,
10 I cannot talk to DSS, then I would say why not.
11 You know, my mom told me not to talk to them. And
12 I would say, you always listen to what your mom
13 says.

14 You know, I'm not going to force a
15 child into a situation.

16 Q. Okay.

17 A. Especially when I believe they have
18 been traumatized.

19 Q. Now, does the school always have
20 someone sit in with the children?

21 A. Mostly. We try, unless there are
22 administrators and counselors are all engaged in
23 other issue. We try to have a school
24 representative to sit in, so the child feels safe
25 and comfortable. It's scary for young children to

1 go into a room of adults that they don't know.

2 Q. And does the school representative take
3 notes during this?

4 A. No, unless they're personal notes.

5 Q. I'm sorry?

6 A. Unless they're personal notes. Those
7 are not notes that we would share.

8 I mean, there's really no need to take
9 notes.

10 MR. DAVIDSON: What number are you on?

11 MR. BUTCHER: 9.

12 BY MR. BUTCHER:

13 Q. I'm handing you Exhibit 9, sir.

14 A. Okay. Thank you.

15 Q. Do you recognize them at all?

16 A. Yes, sir.

17 Q. What do you call them? I call them
18 face sheets?

19 A. Well, they used to call them blue
20 cards, because they were always blue. But they are
21 our sign-in and sign-out cards.

22 Q. And these were filled out by parents at
23 the beginning of the school year at Sand Hill
24 Elementary?

25 A. Yes, sir.

1 Q. And are they used at other schools,
2 similar ones?

3 A. Similar ones. This is our own form,
4 because we like to keep track of everything of
5 everything.

6 Q. Do you remember seeing these from the
7 Mays?

8 A. Yes.

9 Q. Did you ever talk to the Mays about
10 what was written on them?

11 A. I don't remember, specifically,
12 speaking to them about what was written on them.
13 If I did, I would have said something to the effect
14 of, we need a court order signed by a judge to make
15 this happen.

16 We get a lot of parents write things on
17 blue cards saying, children's father is not allowed
18 to pick them up, children's grandmother is not
19 allowed to pick them up. We get involved in a lot
20 of custodial issues that we request court orders
21 signed by a judge.

22 Q. But this wasn't a custodial issue; was
23 it?

24 A. It doesn't appear to be.

25 Q. In fact, the Mays were asking that they

1 be contacted or their attorney be contacted any
2 time DSS came to interrogate the children; correct?

3 A. Sure. Yes, they did.

4 Q. And you never did that; did you?

5 A. Not after -- what year was this?

6 Q. This would have been August 3rd, 2017.

7 It's a little bit hard to read. It's in the center
8 page.

9 A. I think I called in November, from the
10 first incident. I did call mom to give her a
11 head's up, which is definitely not typical
12 practice.

13 Q. Are you talking about when **J.H.M.**
14 said, mom threw a toy at me?

15 A. Oh, yes.

16 Q. And just for your recollection that was
17 November of '16?

18 A. Okay. Thank you.

19 That was the only time that I called
20 mom. And then typically we do not call parents
21 regarding DSS business.

22 MR. BUTCHER: Your Honor, I would like
23 to move Number 9 into evidence.

24 THE COURT: Any objection?

25 MR. BARLOW: No objection.

1 MR. DAVIDSON: No objection.

2 (Plaintiff's Exhibit No. 9 was moved in
3 as evidence.)

4 BY MR. BUTCHER:

5 Q. I'm handing you what has been marked as
6 14. Are you familiar with that document, sir?

7 A. Yes, sir.

8 Q. Okay. What is that?

9 MR. DAVIDSON: Objection, Your Honor.
10 I don't know if you have 14, Judge.

11 THE COURT: Let me look. Just one
12 second.

13 What's the nature of the objection?

14 MR. DAVIDSON: Number one, Your Honor,
15 it's hearsay. And, number two, it's actually
16 making Mr. Butcher and Mrs. Butcher witnesses to
17 this case.

18 THE COURT: What's the purpose of you
19 wanting to introduce this?

20 MR. BUTCHER: Your Honor, this was a
21 letter sent on behalf of the May family, and Joseph
22 Pye, the superintendent. And it copied the DSS
23 attorney.

24 Your Honor, do I need to go in as an
25 attorney rule?

1 THE COURT: You can put it on the
2 record.

3 MR. BUTCHER: Okay. Under the
4 attorney, as witness rule, the main purpose is not
5 to make attorneys or someone representing a party
6 as a witness.

7 So as long as there is a witness that
8 can testify to the thing or to the subject matter,
9 then the attorneys cannot be instantaneously turned
10 into a witness, especially when an attorney is
11 acting as a representative capacity, as an attorney
12 for the party.

13 This prevents parties -- opposing
14 parties from trying to eliminate other side's
15 attorneys by introducing evidence, which may have
16 an attorney's name on it.

17 I think Mr. Baird, he doesn't really
18 have to testify as to what I have talked about, but
19 he can certainly testify as to what he saw, when he
20 received it, and what he did.

21 THE COURT: Any response, Counselor?

22 MR. BARLOW: It's his objection.

23 MR. DAVIDSON: Your Honor, number one,
24 it's a letter that's obviously self-serving in
25 nature. Number two, it provides certain legal

1 questions that are central to this case.

2 In fact, I actually read the last
3 sentence. And in the letter it says, we are well
4 past that stage -- talking about the
5 investigations -- and DSS is now simply digging for
6 dirt on my client's family.

7 It's clearly hearsay. It's clearly
8 where Mr. Butcher essentially is saying shouldn't
9 it continue. I will seek an injunction from the
10 Court. He is simply threatening the action.

11 And, in fact, Your Honor, in September
12 of 2017 the State Department of Social Services
13 brought an action involving the Mays, which
14 Mr. Butcher counter-claimed. And my understanding
15 has raised some of these similar issues in that
16 counter-claim.

17 So I'm not sure of the relevance of
18 this letter, nor any questions of this witness
19 about this letter.

20 So that's my -- my question is, why is
21 it relevant. It's hearsay and self-serving. And
22 depending on how Mr. Butcher asks the questions he
23 might make himself a witness.

24 THE COURT: Well, here's the thing,
25 obviously, this is not a jury trial. So it

1 wouldn't be prejudice, as far as that's concerned.
2 And I can certainly make the determination as to
3 what effect and value and weight I will give it.
4 So I will allow it.

5 You can ask the question.

6 MR. DAVIDSON: Just continue my
7 objection.

8 THE COURT: Yes, sir.

9 BY MR. BUTCHER:

10 Q. Mr. Barrett, do you need a second to
11 read it? Or are you familiar with this document?

12 A. I have read it in the past.

13 Q. And did you receive it sometime shortly
14 after August 16th, 2017?

15 A. Yes.

16 Q. All right. And the bottom line, what
17 was it asking you to do?

18 A. Not allow DSS to interview the
19 children.

20 Q. And did you comply with that at all,
21 that request?

22 A. No. Often times we will get letters
23 from lawyers about custody issues, but we also
24 asked for a signed order by a judge.

25 Q. But did you respond in any way to this

1 letter?

2 A. Not to your office.

3 Q. And did Ms. May hand deliver that to
4 you? Or do you have any recollection?

5 A. She would hand deliver things
6 frequently. So I'm going to assume that she did,
7 or she emailed it, as well.

8 MR. BUTCHER: Your Honor, I would like
9 to move Exhibit 14 into evidence.

10 THE COURT: It's in subject to the
11 objection.

12 (Plaintiff's Exhibit No. 14 was moved
13 into evidence without objection.)

14 BY MR. BUTCHER:

15 Q. I'm handing you what's marked as 20.

16 A. Thank you.

17 Q. Sir, are you familiar with this
18 document?

19 A. Yes.

20 Q. And you handed it over yesterday to
21 your attorneys?

22 A. Yes.

23 Q. And did you generate this?

24 A. I did. These were my notes that I
25 found on an external hard drive.

1 MR. BUTCHER: Your Honor, I would like
2 to move this in, Exhibit 20.

3 MR. BARLOW: No objection from us.

4 MR. DAVIDSON: Your Honor, I'm going to
5 note an objection. I know you can take it into
6 consideration. You can figure out whether it's
7 relevant, not relevant, whatever.

8 It is, in fact, hearsay. And in normal
9 circumstances, it can be used to refresh the
10 witness' recollection or allow in his testimony.
11 But you wouldn't introduce. But I understand the
12 Court's previous ruling.

13 THE COURT: And that may just save us a
14 little time, Mr. Butcher. If you lay the proper
15 foundation and ask him regarding his recollection,
16 that might save us a little time. But that,
17 obviously, might streamline the process and save
18 some objections.

19 BY MR. BUTCHER:

20 Q. As a principal at Sand Hill Middle
21 School during this time, who was Ms. Brown?

22 A. At Sand Hill Elementary School and Mr.
23 Brown was a guidance counselor.

24 Q. Okay. And as the principal, did you
25 document information that was passed on by your

1 employees when there were interactions with
2 students, teachers, and with the public?

3 A. Often times I keep a document of
4 conversations. I keep a conference log.

5 Q. And what was the purpose of recording
6 this information for -- I mean, was this -- was the
7 recoordination of this information for the personal
8 purpose, or for the school?

9 A. It was for personal recollection.

10 Q. Okay. And was this information you
11 needed to know, though, in order to make decisions
12 as a principal?

13 A. Not necessarily.

14 Q. Did you have any conversations with the
15 caseworker that day?

16 A. I can't recall. I didn't note it.

17 Q. And do you know who the DSS caseworker
18 that was there that day?

19 A. Well, it says on the paper, the case
20 worker's name is Carrie Ann Halstrung.

21 Q. And were Mr. Brown and Officer Pryor,
22 the SRM, were those two people who had contact with
23 her on behalf of the school that day?

24 A. I'm assuming, yes.

25 Q. Did you use this information in any

1 decision you made, as the school principal?

2 A. This particular set of notes?

3 Q. These notes.

4 A. No, not specific decisions.

5 MR. BUTCHER: Your Honor, for the
6 admissible parts, I would ask that this document
7 come in regarding second and third paragraph, for
8 the purpose of Ms. Brown's statement that she had
9 contact with DSS, and for purpose of Officer
10 Pryor's statements that he had contact with DSS.

11 THE COURT: The problem with that
12 though, Mr. Butcher, is it's really just full of
13 hearsay.

14 You can call those witnesses to come
15 testify as to what they saw. This is just a
16 notation of what was told to him. So the hearsay
17 objection to that is sustained.

18 BY MR. BUTCHER:

19 Q. Did you have any contact with
20 Ms. Jasmine -- is it Flemister --

21 A. I'm not sure.

22 Q. -- when Kaci May withdrew J.H.M. and
23 J.R.M. in September of '17?

24 A. I don't recall.

25 MR. BUTCHER: Pardon me, Your Honor.

1 THE COURT: Yes, sir.

2 BY MR. BUTCHER:

3 Q. So going back to your contact with
4 Ms. May, while you were a principal and she was a
5 teacher, were you the school principal when
6 J.H.M., J.R.M. got adopted?

7 THE COURT: Mr. Butcher, did you say
8 she was a teacher?

9 MR. BUTCHER: You know, I'm off. I
10 didn't get any sleep last night.

11 THE COURT: I just want to make sure I
12 have it straight.

13 MR. BUTCHER: Let me restart then.

14 THE COURT: Thank you.

15 BY MR. BUTCHER:

16 Q. Were you the principal at the
17 children's school when J.H.M., J.R.M., and L.C.M.
18 were adopted?

19 A. What year were they adopted?

20 Q. '15.

21 A. No.

22 Q. And were you familiar -- are you
23 trained -- or have you been trained in working with
24 children severe trauma?

25 A. Generally, but not significant

1 training. I'm not a therapist.

2 Q. Are you familiar with some of the more
3 extreme symptoms a child may display who has been
4 chronically sexually abused early in their life?

5 A. Yes, I've read some articles.

6 Q. Things like fecal smearing, killing
7 animals, those types of things?

8 A. Sure. But other things.

9 Q. Chronic masturbation, sexual acting
10 out, those types of issues?

11 A. I've read some of those things.

12 Q. Now, did Kaci May tell you about some
13 of the issues that J.H.M. had regarding sexually
14 acting out and masturbating?

15 A. Yes.

16 Q. Okay. And you didn't believe her; did
17 you?

18 A. I wouldn't say that I didn't believe
19 her. I was uncomfortable because J.H.M. was
20 sitting right at the table when she was discussing
21 this with a group of adults.

22 Q. And are you familiar with trauma
23 therapy?

24 A. Yes, somewhat.

25 Q. And are you familiar that during trauma

1 therapy, that you don't use euphemisms, you don't
2 allude to things, you use actual words and talk
3 about actual things?

4 MR. BARLOW: I'm going to object. He's
5 kind of testifying about trauma therapy.

6 THE COURT: Just rephrase your
7 question.

8 MR. BUTCHER: Okay.

9 BY MR. BUTCHER:

10 Q. Do you know how trauma therapy is
11 conducted?

12 A. Probably you can visualize based on the
13 student. But the therapy is much different than
14 calling a child a rapist and a liar at a table of
15 adults, who just met the child.

16 Q. And that was in March of '17?

17 A. That was before we opened the school.
18 The mother called the child a rapist
19 and a liar.

20 Q. And let me ask you this: When parents
21 are dealing with child-on-child sexual abuse in
22 their home, would it be fair to possibly consider
23 they may be going through some issues with that
24 child hurting the other children?

25 A. That's fair.

1 Q. Do you think it might be fair that a
2 parent might be angry with another child seriously
3 hurting another child?

4 A. Sure.

5 Q. Okay. All right.

6 A. And I would also assume that that
7 parent would seek all services offered, that that
8 parent would be reaching out for support in all
9 areas that they could.

10 Q. And were you aware of what services
11 Kaci May had sought out?

12 A. No.

13 Q. Did you ask?

14 A. No.

15 Q. All right.

16 A. I wasn't aware of the different
17 psychological therapists that were brought to IMP
18 meetings at different times, and different ones.

19 Q. And none of them had sexual trauma
20 backgrounds; did they?

21 A. I have no idea.

22 Q. Are you aware -- you talked about
23 saying someone was a liar or a thief?

24 A. A rapist.

25 Q. A rapist. Are some of those actual

1 behaviors that children exhibit due to trauma?

2 A. I don't think it's developmentally
3 appropriate to label a child as a rapist.

4 Q. Okay. So you don't believe in labels?

5 A. I didn't say that.

6 Q. Okay.

7 A. I said, a child developmentally
8 appropriate labeled would be appropriate.

9 Q. Okay. And isn't it true, through, that
10 Kaci May used those terms when she felt -- the
11 school wasn't going to protect J.H.M. or the other
12 children in the school from --

13 A. I don't know how Ms. May felt. I don't
14 know how she felt.

15 Q. During the meetings, hadn't Kaci May
16 asked you to make sure that J.H.M. was not left
17 alone with other children?

18 A. Yes.

19 Q. And Kaci May said she didn't want
20 J.H.M. to go to DJJ, and she didn't want any other
21 children to be harmed; right?

22 A. Yes.

23 Q. And were there a number of instances
24 where she would report to you that she saw J.H.M.
25 walking the halls either with another child or

1 alone?

2 A. She would report that. I remember
3 once.

4 Q. All right. And weren't there concerns
5 that J.H.M. was allowed to go to the bathroom with
6 other children?

7 A. In the beginning. And then we
8 organized where she could go to the nurse's office.

9 Q. And were there concerns from mom that
10 J.H.M. would masturbate while she was in the
11 bathroom?

12 A. Mom did express those concerns.

13 Q. Okay. And wouldn't it be fair to say
14 that, one, you and your staff didn't believe Kaci
15 May, and, two, that you didn't make sure that
16 J.H.M. was supervised?

17 A. I disagree with both of those
18 statements.

19 Q. Okay. Then would it be fair to say
20 that Kaci May in the way she spoke to you -- I know
21 you don't know how she felt. But in the way she
22 spoke to you and the way she advocated for her
23 child, that she believed that you weren't providing
24 J.H.M. safety and other children's safety?

25 A. I don't know.

1 Q. So she didn't say that at these
2 meetings?

3 A. I know that in one breath she would be
4 appreciate, and in the next breath she would be
5 angry. And it was difficult.

6 I stopped trying to figure out things.
7 I just tried to listen and see how we could respond
8 to protect children in the school, her children, as
9 well as the 900 others.

10 Q. Kaci May went so far as to bring a
11 trauma therapist from Greenville to a meeting to
12 help explain these behaviors and the need to
13 protect J.H.M. and other children; correct?

14 A. Yes.

15 Q. And, in turn, you all reported her to
16 DSS; correct?

17 A. Reported who?

18 Q. Reported Kaci May?

19 A. Is this when she brought --

20 MR. DAVIDSON: Your Honor, the same
21 objection.

22 THE COURT: So notes.

23 MR. BUTCHER:

24 Q. Go ahead.

25 A. Yes. I'm not sure. I think from my

1 conversation with Ms. Crocket, I think she was the
2 one who made a report to DSS as well.

3 Q. Was that conversation in writing or did
4 it just --

5 A. No. It was during one of the breaks,
6 when Ms. May was outside screaming and crying. And
7 Ms. Crocket asked if we could provide lunch. And,
8 so, I was getting lunch together, because we
9 started at, I believe, 7:30 or 8:30, and it was
10 1:30, 1:00 or 1:30.

11 Q. And you were doing the 504 plans and
12 talking about an IEP for three separate children?

13 A. I think five. It was five or four.
14 Five were in consideration. And then I think we
15 believe we moved into the 504.

16 Q. So five different you were in, at
17 least, touching some academics?

18 A. Trying to.

19 Q. When was the last time that you dealt
20 with J.H.M.'s IEP?

21 A. Probably when, I think, she was -- the
22 end of -- my last school year there. I believe
23 when she was transferring back from the facility in
24 Columbia.

25 And then we were looking to the reentry

1 plan. And then the transition to the middle school
2 plan. So I believe I was in that IEP meeting for
3 transitioning into middle school.

4 Q. Do you know where she's currently
5 placed?

6 A. Gregg Middle School, I'm assuming.

7 MR. BUTCHER: I don't have anything
8 further. Would you please answer any questions
9 from the other attorneys.

10 MR. BARLOW: Your Honor, can we have a
11 restroom break?

12 THE COURT: Do y'all want to go ahead
13 and do lunch?

14 MR. DAVIDSON: At least this side of
15 the table has to use the restroom.

16 THE COURT: Sure. How long do you
17 anticipate your cross examination taking? I was
18 thinking about going ahead and doing lunch and then
19 start right back at 1:00. Would that be all right?

20 MR. BARLOW: We can do that.

21 I would think probably about a half
22 hour for me.

23 MR. DAVIDSON: I would take that, too.

24 THE COURT: All right. Let's go ahead
25 and do our lunch break and then we can meet at

1 1:00.

2 MS. BUTCHER: And, Your Honor, if the
3 Court would just make sure that the witness is
4 aware that he cannot talk about any testimony to
5 anybody.

6 THE WITNESS: Yes, ma'am.

7 THE COURT: And any objections to these
8 two little ones leaving?

9 MR. DAVIDSON: Not at all.

10 THE COURT: I just assumed. Of course,
11 they are certainly excused.

12 And, Mr. Baird, just remember that you
13 are not allowed to discuss your testimony with
14 anyone during the break.

15 We'll be at ease until 1:00.

16 MR. BUTCHER: And Ms. May may be a
17 little slow coming back. She's going to take care
18 of taking the children home.

19 (A lunch recess was taken at 12:01
20 p.m.)

21 (Court resumed at 1:04 p.m.)

22 THE COURT: Everyone ready to proceed?

23 MR. BARLOW: We're ready.

24 MR. BUTCHER: Ready, Your Honor.

25 THE COURT: Mr. Baird, if you would

1 come on back to the witness stand.

2 MR. BUTCHER: Just as a housekeeping
3 measure, we proffered Exhibit 19. And that was
4 regarding the school policy, specifically, the
5 paragraph regarding the interrogations by law
6 enforcement, as the policy itself doesn't deal with
7 criminal behavior or any type of particular
8 behavior. They could be custodial, noncustodial,
9 criminal in this interrogation.

10 And we believe it has some relevance
11 towards the type of policies that the School
12 District would have.

13 So, from a proffer standpoint, we'd ask
14 that it would be offered and made a Court's
15 Exhibit.

16 THE COURT: It's marked as Court's
17 Exhibit 1 as a proffer.

18 (Exhibit No. 19 was made to Court's
19 Exhibit No. 1.)

20 CROSS EXAMINATION

21 BY MR. BARLOW:

22 Q. Mr. Baird, I hope you had a good bunch.
23 And I'm not going to plow over old ground with you
24 and just sort of go over a few different things
25 that you weren't lead through before.

1 So the current position with the
2 District, what are your job duties in that role?

3 A. My job duties are to support critical
4 instruction in all 15 elementary schools, support
5 the administrators, the needs that may arise, and
6 work with the District leadership on anything that
7 the superintendent tells us to do.

8 Q. Was that a promotion from your
9 principal position?

10 A. Yes.

11 Q. And how long have you been in the
12 current job?

13 A. One year.

14 Q. Now, let's go ahead and talk about this
15 situation some. How long had you known the May
16 family, as of March 2017?

17 A. Well, I believe we met in the early
18 2000s, maybe the late '90s. We were both member
19 of -- both of our families were members of the same
20 congregation that the Mays were apart of.

21 Q. Do you feel that you had a good
22 relationship with Kaci May?

23 A. Well, as fellow church members, you
24 know, friendly. You know, not personal, personal,
25 but friendly.

1 MR. BUTCHER: Objection, Your Honor,
2 relevance. This case is about whether or not the
3 State can interrogate children in school. And
4 we're going back to the '90s.

5 THE COURT: Interrogate or interview,
6 there's two different aspects to that.

7 So you can proceed.

8 MR. BARLOW: Thank you, Your Honor.

9 BY MR. BARLOW:

10 Q. Now, I believe there was some on your
11 direct about 2017 DSS report that was made. Just
12 for clarification, that didn't have anything to do
13 with the DSS interviews at the school in 2017; is
14 that correct?

15 A. That's correct. It was my
16 understanding it was two separate issues.

17 Q. So, that's not what we are here about
18 today?

19 A. Right.

20 Q. All right. Now, how would you describe
21 your working relationship with the May family,
22 leading up to March 17th?

23 A. School-related, professional. And --
24 I'm looking for the word. Just trying to meet the
25 needs of the kids and have the parents comfortable.

1 So I would say friendly and professional.

2 Q. Now, J.H.M. had been going to school,
3 prior to March 2017; correct?

4 A. Yes.

5 Q. Have you ever observed her acting out
6 sexually at school?

7 A. No.

8 Q. Had it ever been reported to you that
9 she had been acting out sexually in her school?

10 A. The mother reported it, but not any
11 faculty staff member.

12 Q. Not by staff or anyone else?

13 A. No one else.

14 Q. Now, let's forward to a meeting in
15 March 27th of 2017. Do you recall meeting with
16 Ms. May on that day?

17 A. Yes.

18 Q. And what was that meeting about? What
19 was the purpose?

20 A. I believe that was the all-day meetings
21 the 5/04. Is that the correct date? I think that
22 was that date.

23 Q. And who would have been present at that
24 meeting?

25 A. School staff, which would include a

1 regular education teacher, a special education
2 teacher, school counselor, school phycologist
3 possibly, parent or parents, and anyone the parents
4 brought in.

5 Q. Were you in that meeting, as well,
6 Doctor?

7 A. Yes.

8 Q. Did Ms. May say things in that meeting
9 that concerned you?

10 A. Yes.

11 Q. I'm going to show you what's been
12 pre-marked as DD II Number 1, Defendant's exhibit.

13 Did you make a note of the meeting?

14 A. I did, yes.

15 Q. Can you identify what this particular
16 exhibit is or which of it is your note?

17 A. The first page of this exhibit is not
18 mine. But the ones following, that start with on
19 March 20th, 2017, and going to the last quote,
20 where Ms. May said, child can be doing anything
21 with this -- with other children and we don't know
22 it.

23 Q. Do you know who did the first page of
24 this?

25 A. I believe it may have been our school

1 psychologist, Bobby Joe Marush (ph) .

2 Q. Now, was this note made on or around
3 March 28th, 2017, after the meeting?

4 A. Yes, sir.

5 Q. Is it the normal practice of the School
6 District to document and note things of this
7 nature?

8 A. If there's anything concerning or
9 things that we want to reflect on to make sure that
10 we have our thoughts in order.

11 Q. And these records are kept in the
12 regular course of business of the School District?

13 A. Yes. And usually my personal notes are
14 kept with me. I believe the school psychologist
15 brought me this because she was concerned.

16 Q. And you've kept these records and
17 maintained them in your office?

18 A. Yes, in my office.

19 Q. And did you provide these to anyone?

20 A. No. Only to me and whoever requested
21 them, officially.

22 Q. And the substance of this might have
23 been provided, but not the actual document?

24 A. The substance of?

25 Q. The substance of what you have written

1 in here, have you shared that with outside the
2 school?

3 A. No.

4 MR. BARLOW: We would move that this be
5 admitted in as Dorchester II, Exhibit 4.

6 THE COURT: Any objection?

7 MR. BUTCHER: Yes, Your Honor. We
8 would object to the first page, obviously. The
9 same objection that I encountered earlier, was the
10 person who is the school psychologist who wrote
11 this. These are notes and are subjective. It's
12 not part of a psychological evaluation or anything
13 official.

14 This is a he said/she said materials
15 from a meeting. So we would object to that page.
16 The second page, I mean, if these are his notes, I
17 believe he can testify to, if he needs to refresh
18 his memory. But, you know, the person -- the best
19 evidence is right here in front of us. And he can
20 testify to that. So I would ask that these
21 documents not be admitted, since he's here.

22 THE COURT: You can ask him to refresh
23 his recollection.

24 MR. BARLOW: Just for the purposes of
25 the response to that, he included these as his

1 proffered Exhibit 22, as part of that. So we would
2 think that objection would be waived.

3 And, secondly, we believe that these
4 are his business records, subject to that hearsay
5 objection.

6 MR. BUTCHER: One, Your Honor, they
7 haven't consented to any of my exhibits. But that
8 doesn't say they're in. Everything I have is in
9 preparation for my case or to react to something.

10 THE COURT: Why don't you just ask him
11 about what's contained in it.

12 MR. BARLOW: Fair enough. Thank you,
13 Your Honor.

14 BY MR. BARLOW:

15 Q. Dr. Baird, in particular, do you
16 believe it would refresh your recollection to be
17 able to review these notes that you made on that
18 date?

19 A. Sure.

20 Q. It was more than three years ago now?

21 A. Yes, sir.

22 Q. Dr. Baird, going to your particular
23 notes, can you go through what Ms. May told you
24 that particularly concerned you in that meeting?

25 A. Right. She stated that J.H.M. was a

1 threat to herself. She puts things in her vagina
2 often. And mom said, I provide Vaseline to help
3 her.

4 Ms. May stated I watch her all the
5 time. I do not want my children to become victims
6 of J.H.M.. Ms. May reported that all her children
7 who all sexually abused my J.H.M. and J.R.M..

8 Ms. May stated that J.H.M. was found
9 putting her fingers in another student's vagina
10 last year, while riding the bus home. However, the
11 report was lost.

12 Ms. May reported that J.H.M. is a
13 master manipulator. She lies. Ms. May reported
14 that J.H.M.'s biological mother drank alcohol, and
15 let her boyfriend rape J.H.M. as a baby.

16 Ms. May reported that my chickens are
17 constantly getting broken backs and that she is
18 killing them. I know she is. The fish are also
19 dieing. Ms. May stated J.H.M. -- I believe that's
20 J.R.M. -- J.R.M. has threatened my life. He lies,
21 cheats and steals.

22 MR. BUTCHER: Objection, Your Honor. I
23 think he can testify. But he's just reading his
24 notes.

25 THE COURT: Well, he's recollecting

1 what was in his notes. He can go
2 sentence-by-sentence on what was the next
3 recollection or he can come out and read it.

4 MR. BARLOW: Sure. I don't think
5 there's any requirement to paraphrase the notes.

6 THE COURT: Please proceed.

7 THE WITNESS: **J.R.M.** has threatened my
8 life. He lies, cheats, and steals. Ms. May stated
9 that we cannot ignore this behavior because he will
10 not change the behavior -- this will not change the
11 behavior.

12 Ms. May was recorded talking about dead
13 chickens. Ms. May was recorded that she strongly
14 suspected that **J.R.M.** killed chickens, and ten fish
15 at home.

16 Ms. May stated that it's either **J.R.M.**
17 or **J.H.M.** that picked up the dead chicken, but
18 believed **J.R.M.** with his bear hands. And this is
19 not normal. A normal child would have used a
20 shovel.

21 Ms. May stated that I have very sick
22 children who love to rape other children in my
23 house. Ms. May reported, I have envisioned **J.R.M.**
24 and **J.H.M.** learning to ride a bicycle, and in the
25 way that their hands would not be in my daughter's

1 vagina.

2 Ms. May stated, I don't trust J.R.M..
3 He has threatened my life. I watch him all the
4 time.

5 J.R.M. or J.H.M. has raped them. I
6 love these children. I want them to grow up and
7 leave my house and be successful. I am sorry that
8 you don't see the behaviors that I see.

9 Ms. May reported that J.H.M. raped her
10 babies. And those are the names of the babies in
11 her home. L.C.M. L.C.M. and J.W.M., I believe.

12 Ms. May reported that while our husband
13 and I were out and the children were being watched
14 by her brother -- Ms. May's brother, J.H.M., raped
15 my babies. J.H.M. waited for my brother to go to
16 bed and she raped them. She dragged them across
17 the floor and brutally raped them with a wooden
18 paddle and stuck her fingers in objects in every
19 open holes of their bodies.

20 They children dug their nails into the
21 floors, as she dragged and raped them. My babies
22 are afraid of J.H.M.. I have to protect my babies
23 so this does not happen again.

24 I do not sleep for fear that my babies
25 are being raped again. Ms. May reported that

1 **J.H.M.** masturbates everyday every second and every
2 minute of the day. **J.H.M.** uses objects in her
3 fingers to masturbate over and over again.

4 And then during the meeting Ms. May
5 made the following statements, which caused
6 concern. All children had a mental health
7 breakdown following the investigation. They,
8 **J.R.M.** and **J.H.M.**, need supervision at all times.
9 My babies were brutally raped by her. My babies
10 are at stake.

11 She, **J.H.M.**, sucked **J.T.M.**'s penis.
12 My children were all sexually abused by **J.R.M.** and
13 **J.H.M.**.

14 They could be doing this with other
15 children and we don't know about it.

16 BY MR. BARLOW:

17 Q. And after this meeting, a report to DSS
18 followed?

19 A. Yes.

20 Q. And I believe in your direct you were
21 asked about another person that was there on behalf
22 of the family duty, Ms. Crocket?

23 A. Yes.

24 Q. Do you know if she made a report?

25 A. I'm not sure. I think she was planning

1 to, but I'm not sure.

2 Q. Would it have been appropriate to just
3 wait and see if she made a report?

4 A. No, sir. I think as a mandator
5 reporter, it's my responsibility to report. I
6 can't assume other people are, or I can't ask if
7 they are.

8 Q. And as a mandated reporter, what is a
9 mandated reporter, in your own words?

10 A. I would say a professional that works
11 with children or interacts with children on a
12 regular basis, or someone who sees or has a
13 relationship with children that may be able to see
14 abuse or negligent.

15 Q. And did DSS come out to interview the
16 students after that?

17 A. Yes.

18 Q. All right. And did you participate in
19 those meetings?

20 A. I don't believe so.

21 Q. Did you actually ask anybody any
22 questions in those meetings?

23 A. No.

24 Q. Was it reported to you that any staff
25 asked any questions or actively participated in

1 those meetings?

2 A. It was not a recorded meeting. We were
3 directed to be a comfort for the child, and support
4 the child.

5 Q. When DSS comes to the school, what is
6 your practice to verify that they are actually
7 presented?

8 A. We ask them to present their badge. We
9 take a copy of it and we ask to put their names
10 down, who they want to see. And then we try to
11 provide a space for them and a staff member to --
12 so the child isn't afraid.

13 Q. And I believe Plaintiff's Exhibit 2 may
14 or may not be up there.

15 MR. BARLOW: Can you provide that to
16 the witness, please?

17 BY MR. BARLOW:

18 Q. And, Dr. Baird, can you tell me what
19 that is, Plaintiffs' Exhibit 2?

20 A. Sure. When DSS comes in we just make a
21 copy of their badge, we just note the date and the
22 time. You will see a child's name marked down. It
23 says absent for homeroom. So we would call down
24 and ask for that child.

25 The next, that child was absent. We

1 call down to Ms. Combs' (ph) room just to verify.
2 It looks these -- one of the caseworkers saw one
3 child from Ms. McCloud's room.

4 Q. And do you believe that the School
5 District documented that one -- or at least your
6 school documented whenever it happened?

7 A. Yes, sir. We keep a folder at the
8 receptionist desk. The receptionist is responsible
9 for who comes in and out. And we keep a folder in
10 the front.

11 MR. BARLOW: This may be a bit unusual,
12 but we would move at this time that Plaintiffs' 2
13 be admitted into evidence.

14 We've already marked it as Plaintiffs'
15 2. Is there any objection?

16 MR. BUTCHER: No objection.

17 THE COURT: Any objection from the --

18 MR. BARLOW: No objection. Well, I had
19 them pre-marked. So maybe this will be premarked
20 as Defendants' 4.

21 (Defendants' Exhibit No. 4 was entered
22 into evidence.)

23 BY MR. BARLOW:

24 Q. Look at the one that has DEF District
25 0006 after it.

1 A. Yes, sir.

2 Q. And there's a notation on there that
3 says Dr. Baird assisted?

4 A. Yes.

5 Q. And what does that mean to you?

6 A. That I just sat in.

7 Q. So would that refresh your recollection
8 as to whether you were in the meeting or not?

9 A. Yes, I must have been.

10 Q. And what was the demeanor of the
11 children when you were in there?

12 A. I'm not allowed to speak with you, is
13 basically what they said. I'm not allowed to speak
14 with you. My mom said, I can't talk to you.

15 Q. Did the kids seem to be upset?

16 A. Not at all.

17 Q. Were they crying?

18 A. No.

19 Q. Did they appear to be angry?

20 A. No. It seemed like a coached
21 statement.

22 Q. How long did the meeting last, do you
23 recall?

24 A. No more than five, six minutes.

25 MR. BUTCHER: Objection, Your Honor, to

1 the seem like coached statement.

2 THE COURT: He can testify as to what
3 their demeanor or appearance was.

4 BY MR. BARLOW:

5 Q. You can answer.

6 A. Their demeanor was calm, appearance was
7 calm. They flatly said, I'm not allowed to speak
8 to you. My mom said talk to DSS. My mom said I
9 couldn't talk to you.

10 Q. As far as the other DSS meetings, that
11 you were not apart of, did you receive any reports
12 from any of your staff that any of the children
13 were upset?

14 MR. BUTCHER: Objection; hearsay.

15 THE WITNESS: No. They never seemed
16 upset. I never saw then cry.

17 THE COURT: There's an objection that I
18 have to rule on.

19 THE WITNESS: I'm sorry.

20 MR. BARLOW: I'm asking for the fact of
21 the report, not what the report was.

22 THE COURT: I'll allow it.

23 BY MR. BARLOW:

24 Q. Did you receive any reports that the
25 children were particularly upset by DSS being there

1 to interview them?

2 A. I did not.

3 Q. Now, when DSS was there, were they
4 sharing information about why they were there with
5 you?

6 A. In response to an allegation of abuse
7 and negligent.

8 Q. Did you have a pretty good sense of
9 what the allegation --

10 A. Yes.

11 Q. -- was based on what you had heard in
12 March?

13 A. Yes, I did.

14 Q. Now, you received -- if you look at
15 Exhibit 14, which may already be up there.

16 A. Yes, sir.

17 Q. And that is the letter from
18 Mr. Butcher, that he asked you about?

19 A. Yes, sir.

20 Q. If you look at the second page there,
21 it's kind of the last full paragraph. It says, it
22 certainly sound public policy to our SCDSS to
23 conduct an initial investigation of abuse and
24 neglect, because sometimes the school hours are the
25 only time the children can be seen without his or

1 her possible abusers being around. Did I read that
2 right?

3 A. Yes, sir.

4 Q. Do you agree with that statement?

5 A. Completely.

6 Q. Now, you did not honor this request?

7 A. I did not.

8 Q. Now, are you aware of any other DSS
9 interviews after November of 2017 of any of the May
10 children?

11 A. Not that I'm aware of.

12 Q. And some of the children have continued
13 to attend Dorchester II Schools?

14 A. I assume, yes.

15 Q. Do you know if DSS has been back to any
16 school to interview a May child after November of
17 2017?

18 A. I'm not aware of any.

19 Q. Do you have any reason to believe,
20 sitting here today, that they will come back to
21 interview the May children?

22 MR. BUTCHER: Objection, Your Honor;
23 speculation.

24 THE COURT: Do you have any current
25 information?

1 BY MR. BARLOW:

2 Q. Yes. Do you have any current
3 information that would lead you to believe that the
4 May children are going to be interviewed by DSS?

5 A. I do not.

6 MR. BUTCHER: Objection; foundation.

7 THE COURT: Overruled.

8 BY MR. BARLOW:

9 Q. Now, just a few more questions here.
10 Now, based on what you observed and what you may
11 have been reported to you by your staff, do you
12 have any reason to believe that the visits were not
13 reasonable in duration, the interviews?

14 A. I have no reason to believe they were
15 not reasonable.

16 Q. Do you have any reason to believe that
17 they were not reasonable in the content of the
18 questions?

19 MR. BUTCHER: Objection, Your Honor. I
20 think he's asking -- I think he's asking
21 essentially to step in your shoes as to what's
22 reasonable and what's not.

23 He can describe these things. And I
24 think that's your job as to reasonableness.

25 THE COURT: So you can ask him the

1 length of time, the tone of the conversation, or
2 interrogation, however you want to put it.

3 BY MR. BARLOW:

4 Q. Any concerns of the questions they had?

5 A. None at all.

6 Q. Any reported to you?

7 A. None.

8 Q. Duration of visits, any concerns you
9 had?

10 A. Short. I think I remember, you know,
11 it being five, six, seven minutes.

12 Q. Any inappropriate questions that you
13 heard?

14 A. Not at all.

15 Q. Any inappropriate questions reported to
16 you by your staff?

17 A. No, sir.

18 MR. BUTCHER: Judge, it's speculation.

19 THE COURT: He's certainly capable as a
20 doctor within his experience in his position with
21 the School District to determine if he felt that
22 the question was appropriate or not.

23 BY MR. BARLOW:

24 Q. When the students refused to answer, as
25 you testified, did DSS leave?

1 A. Yes.

2 Q. And stop questioning them?

3 A. Yes. And very friendly.

4 MR. BARLOW: Give me just a minute,
5 Your Honor.

6 THE COURT: Yes, sir.

7 MR. BARLOW: Answer any questions that
8 Mr. Davidson may have. Thank you.

9 CROSS EXAMINATION

10 BY MR. DAVIDSON:

11 Q. Dr. Baird, you indicated that -- I
12 think you said before the school started, you were
13 meeting with Ms. May and other adults at a table.
14 Where was that?

15 A. The conference room at Sand Hill
16 Elementary School.

17 Q. Was this before or after this
18 March 27th, 2017 meeting?

19 A. Before.

20 Q. So was it before school started?

21 A. Yes, sir.

22 Ms. May wanted a meeting and certain
23 people there. And we had just received occupancy,
24 certificate of occupancy for the new building, and
25 I was able to arrange a meeting for Ms. May to

1 share her concerns.

2 Q. All right. So let me make sure I'm
3 right. Sometime before the school opened in August
4 of '16, you had a meeting with Ms. May to discuss
5 her concerns about J.H.M. and J.R.M.?

6 A. Yes.

7 Q. And during that meeting, I think you
8 said she -- and J.H.M. was present?

9 A. Yes.

10 Q. Was J.R.M. present?

11 A. I don't think so.

12 Q. But during that meeting in front of
13 individuals that did not know J.H.M., or for that
14 matter, Ms. May, she referred to J.H.M. directly
15 as a rapist?

16 A. Yes, sir.

17 Q. Did that concern you?

18 A. Yes.

19 Q. Why?

20 A. I think you can say that a behavior of
21 rape or you speak about the behavior, but you don't
22 call the person, a child a rapist.

23 I think you can speak about the
24 behavior as being rape. But to call a child a
25 rapist, I think that can become a self -- I mean,

1 the child being called names is inappropriate.

2 MR. BUTCHER: Objection, Your Honor.

3 This is opining on his opinion on this, I think

4 that's for the Judge to determine.

5 THE COURT: It's been asked and

6 answered. It was actually part of your

7 examination, as well, as what the child was called

8 by Ms. May. But we can continue.

9 MR. DAVIDSON: Thank you, ma'am.

10 BY MR. DAVIDSON:

11 Q. And in March, in and around 2017; is

12 that right?

13 A. Of 2017, yes, sir.

14 Q. March 27th of 2017. The reason I am

15 able to remember that date is that's my birthday.

16 That's probably the only reason I have been able to

17 remember it.

18 That meeting was an all-day meeting?

19 A. Yes, sir.

20 Q. And it what was what's referred to as a

21 504 meeting?

22 A. 504 consideration, and then we had also

23 scheduled an IEP meetings.

24 Q. And IEP meeting is an Individualized

25 Educational Plan?

1 A. Yes, sir.

2 Q. And during that portion of the
3 meetings, you come up for things, for lack of a
4 better term, that would help a student succeed and
5 grades to pick up?

6 A. Yes, sir. We focus on academic
7 achievement. And the reason it was taking so long.
8 The children weren't doing well academically. And
9 we -- mom wanted the IEP and 504 to be focused on
10 behavior. So we were going through all of the data
11 that we could find.

12 Q. Now, one thing in this meeting is
13 normally IEPs and 504s do not last all day?

14 A. No, sir, they do not.

15 Q. So this was a rather unusual 504
16 meeting?

17 A. Well, and we had scheduled for each
18 time, you know, 8:30 to 9:30, 10:30, so yes.

19 Q. In this regard, though, Ms. May brought
20 up disturbing allegations about what had happened
21 with J.H.M. and some of her biological babies;
22 correct?

23 A. Yes, sir.

24 Q. And you were concerned not only for
25 J.H.M., but the other children in the home, as

1 well as Ms. May's mental state?

2 A. That is correct.

3 Q. And shortly thereafter -- actually, I
4 think two days later on the 29th, DSS showed up at
5 the school to interview some of the children?

6 A. Yes, sir.

7 Q. You didn't sit in on those meetings?

8 A. No, I did not.

9 Q. Now, as the principal, if something
10 goes on or if something is wrong, are you the
11 person that it is normally reported to?

12 A. Typically, yes.

13 Q. Were you ever advised by anyone that
14 DSS workers in that March dates had done anything
15 inappropriate in the meeting with the children?

16 A. That was never reported to me. And I
17 never observed anything inappropriate.

18 Q. Because you met, I think, with J.H.M.
19 in November; is that right?

20 A. I think so.

21 Q. I think you actually have her --

22 A. I can see, look at it and see. It says
23 that we met September 19th, 2017.

24 Q. During you sitting there, listening to
25 her -- and I think you said the children said they

1 would not speak to her?

2 A. That is correct.

3 Q. Did she try to harass them into
4 speaking to her?

5 A. Not at all.

6 Q. Did she try to coerce them into
7 speaking with them?

8 A. Not at all.

9 Q. Did she do anything other than thank
10 them and send them back to class?

11 A. I think that's exactly what she did.
12 She thanked them, and looked at me and said, we're
13 finished. And I said, you guys can go back to
14 class.

15 Q. Well, when the kids left, were any of
16 them crying?

17 A. Not at all.

18 Q. Upset?

19 A. No.

20 Q. Went back to class?

21 A. Went back to class.

22 Q. And, to your knowledge, since
23 November 2017, no one with DSS came to Sand Hill to
24 interview any of the children?

25 A. To my knowledge, that's correct.

1 MR. DAVIDSON: Mr. Baird, I appreciate
2 your time.

3 THE COURT: Any redirect?

4 MR. BUTCHER: Yes, some, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. BUTCHER:

7 Q. So a couple of things, Mr. Barrett.
8 You went through this list of stuff that was
9 refreshing your memory. Did you have any actual
10 knowledge that what Ms. May was saying was actually
11 untrue?

12 A. These are only my notes of what she
13 said.

14 Q. Right. But my question is: Do you
15 have any knowledge that what she said was untrue?

16 A. I do not have any knowledge of if, that
17 it was untrue. I don't know.

18 Q. And isn't it true that as the meeting
19 went on and Ms. May felt that you weren't listening
20 to her and your staff wasn't listening to her, she
21 got more emotional?

22 A. The emotions fluctuated throughout the
23 day. It varied from complementary to angry to
24 hysterical, back to complimentary.

25 Q. Now, you talked about your meeting in

1 August of 2016 at the new school; correct?

2 A. Yes, sir.

3 THE COURT: Just one second,
4 Mr. Butcher. Can I just you have step back six
5 feet away from the court reporter.

6 MR. BUTCHER: That's fine. I'm sorry.

7 BY MR. BUTCHER:

8 Q. All right. So this meeting in 2016
9 occurred at the new school and Ms. May asked for
10 it; right?

11 A. That's correct.

12 Q. And she told you that J.H.M. had been
13 reported by the bus driver and C.B.M. to have stuck
14 her fingers in another child's vagina on the bus;
15 correct?

16 A. That's what she said.

17 Q. And at the end of the meeting, the bus
18 driver was actually at the school and she said, go
19 ask them; didn't she?

20 A. I remember that.

21 Q. And you didn't do that; did you?

22 A. No.

23 Q. Okay. Now, if you had a child who
24 actually sexually acted out on another children,
25 wouldn't it be important to find out that that

1 happened, since you're responsible for everything
2 that happens at the school?

3 A. Yes.

4 Q. And you failed to do that; correct?

5 A. I believe I called the principal at the
6 other school and asked if there was a bus referral.
7 And that principal told me, there was not.

8 Q. And even though the actual witness
9 there was several feet away, you chose to talk to
10 the principal?

11 A. Yes. Because I felt like it was a
12 private conversation and not a conversation to have
13 in the lobby.

14 Q. And you couldn't ask the principal to
15 step into a room to ask him?

16 A. You mean the bus driver?

17 Q. Yeah. That's what I meant.

18 A. Yes. I could, but I did not. I wanted
19 to speak with the principal.

20 Q. So you choose not to believe Kaci May
21 about that; correct?

22 A. No, that's not correct.

23 Q. And whether or not you like Kaci May
24 using the term rape, if someone had sex without
25 someone else's permission and in violation of their

1 rights, do you think that's fair from someone to
2 call it a rape when they're describing it?

3 A. I don't know. I would not call a child
4 a rapist. But I would say, this behavior could be
5 defined as rape. I would focus on the behavior,
6 not the person.

7 Q. But besides the somatics, was she
8 wrong, if her child sexually violated another
9 child?

10 A. I think the motivation was to create a
11 spectacle and attention seeking.

12 MR. BUTCHER: Your Honor, would you ask
13 him to answer the question? I've tried it twice.

14 THE WITNESS: Can you repeat the
15 question?

16 BY MR. BUTCHER:

17 Q. If this happened, was Kaci May wrong in
18 describing it as rape? I'm not asking if it was
19 appropriate.

20 A. I don't think I can be the judge of
21 right or wrong.

22 Q. Are you not familiar with --

23 THE COURT: He's testified he wouldn't
24 classify it that way. Your client may testify it
25 that way. He did not. He's answered that like six

1 times. Let's move on.

2 BY MR. BUTCHER:

3 Q. Did Kaci May show you an email from the
4 teacher at the school about the sexual incident
5 from the bus?

6 A. Yes. She shared an email with me. She
7 started sharing emails as soon as I was named
8 principal.

9 Q. Okay. Does that concern you that
10 another principal may not have properly documented
11 or may not be forthcoming in sexual incidents at
12 the school?

13 MR. DAVIDSON: Object to the form.

14 THE WITNESS: I trust that the school
15 followed procedures and the policies in place.

16 BY MR. BUTCHER:

17 Q. Have you ever been to the May home?

18 A. No. I think I went to the driveway
19 once to see how far the children had to walk to the
20 bus stop.

21 Q. Okay.

22 A. I've never been inside the home. There
23 was an issue about where the bus stop was located.
24 So I went out to see how far they had to walk and
25 see if it was unsafe.

1 Q. And earlier you were testifying as to
2 whether or not you believe that any other DSS
3 incidents may occur with the May children. Based
4 on your knowledge and experience, when was the last
5 time that you had contact with the May children in
6 a professional setting?

7 A. June 2018 -- 2019.

8 Q. So you really don't know what's going
9 on with the May family; do you?

10 A. Not in the last 12 months.

11 Q. So your opinion on what or may not
12 happen with DSS doesn't really -- it's not built on
13 any current information; correct?

14 A. It's built, on my experience.

15 Q. But you don't have any knowledge of
16 current information; correct?

17 A. I don't.

18 Q. Like, you said **J.H.M.** was in Gregg
19 Middle School; right?

20 A. I did. That's where I assume she is
21 at.

22 Q. Would it surprise you to know that he's
23 in a residential facility in Arkansas?

24 A. I'm not surprised. I know mom was
25 working on that.

1 MR. BUTCHER: I don't have anything
2 further.

3 MR. BARLOW: Just one.

4 THE COURT: Sure.

5 RECROSS EXAMINATION

6 BY MR. BARLOW:

7 Q. Dr. Barid, regardless of whether
8 Ms. May -- on March 27th of 2017, regardless of
9 what she was telling you was true or untrue, that
10 doesn't change your obligation to report it; does
11 it?

12 A. That's right. I have an obligation to
13 report it.

14 Q. And you had legitimate concerns for her
15 emotional and mental state?

16 A. Yes.

17 Q. And the safety of the children?

18 A. Yes.

19 MR. BARLOW: That's all I have.

20 THE COURT: Thank you, Dr. Baird. You
21 may step down.

22 MR. BARLOW: May the witness be
23 excused?

24 THE COURT: Any objection?

25 MR. BUTCHER: No objection from the

1 Plaintiffs, Your Honor.

2 THE COURT: Any objection?

3 MR. DAVIDSON: None. I apologize.

4 THE WITNESS: All right. You may call
5 your next witness.

6 MR. BUTCHER: Could we take a
7 post-lunch break. I don't smoke anymore so that's
8 not it.

9 THE COURT: I'll wait for your right
10 here.

11 (A brief recess was taken.)

12 THE COURT: Mr. Butcher, you may call
13 your next witness.

14 MR. BUTCHER: Your Honor, the
15 Plaintiffs calls Garry James.

16 THE CLERK: Please raise your right
17 hand to be sworn.

18 Please state your full name, for the
19 record.

20 THE WITNESS: Garry Craig James.

21 THE CLERK: Do you swear or affirm that
22 the testimony you are about to give will be the
23 truth, the whole truth, and nothing but the truth?

24 THE WITNESS: I do.

25 THE COURT: Your witness.

1 MR. BUTCHER: Thank you, Your Honor.

2 GARRY CRAIG JAMES,

3 DIRECT EXAMINATION

4 BY MR. BUTCHER:

5 Q. I'm going to set these here for a
6 moment. All right.

7 Mr. James, good to see you again.

8 A. Good to see you.

9 Q. Would you please tell the Court where
10 you work?

11 A. Sure. I work for the South Carolina
12 Department of Social Services as the training
13 director.

14 Q. And how long have you been the training
15 director, sir?

16 A. I've been the training director in this
17 current role for the past six months. And prior to
18 that I was a child welfare director.

19 Q. And before that, what did you do?

20 A. Worked for an organization called
21 Continuum of Care.

22 Q. What is Continuum of Care?

23 A. They provide case management services
24 in South Carolina.

25 Q. And before that, what did you do?

1 A. I worked for other state agencies in
2 children services for about 16 years.

3 Q. You're also a published author?

4 A. I am.

5 Q. And what do you do in your current
6 position?

7 A. I managed and oversee training for the
8 Department.

9 Q. And with training regarding assessment
10 or investigations, is the policy manual related to
11 that under Chapter 7 of DSS?

12 A. Yes.

13 Q. And are assessments and investigations,
14 is that an interchangeable term?

15 A. They are interchangeable.

16 Q. I'm going to ask you to the pick up
17 that document, if you could grab that please.

18 MT. WOODINGTON: Can we have the book
19 number?

20 MR. BUTCHER: It's number 18.

21 BY MR. BUTCHER:

22 Q. It's an expert so it's not the whole
23 thing. But do you recognize what that is, sir?

24 A. I do.

25 Q. What is that, sir?

1 A. This is the policy Child Protective
2 Services.

3 Q. And how does DSS put together its
4 policy?

5 A. Basically, it's built on statute.

6 Q. Is that federal and state statute, sir?

7 A. State.

8 Q. Does it have to -- does any part of
9 Title B of Title 4B relate to CPS or treatment?

10 A. I'm not familiar with it.

11 Q. That's fine.

12 And with Child Protective Services or
13 investigations, what is the goal?

14 A. The goal of investigations is to
15 ascertain all facts related to the allegations,
16 through the interviewing processes with children,
17 parents, and other caregivers, just to ensure the
18 safety of the child or children involved.

19 Q. And this policy and procedure is
20 implemented in all of the training that's done with
21 DSS?

22 A. That's correct.

23 Q. And if a new caseworker shows up to
24 DSS, what type of training do they receive?

25 A. It just depends. In this particular

1 case -- the 2017, are we referring to that
2 training?

3 Q. Sure.

4 A. Because there's several reiterations
5 since then.

6 Q. Tell the Court essentially the basis of
7 what they're trained in and the length regarding
8 CPS?

9 A. Okay. It's based on law, based on
10 policy. It's based on the definitions of
11 maltreatment, investigations, intake, family
12 preservation intake, foster care, adoptions. All
13 of those things are covered in training.

14 Q. Okay. And some of it is in-person and
15 some of it is on-the-job training?

16 A. A lot of it is in-person. And then
17 they go back to certain CPS requirement in the
18 field in their counties.

19 Q. And in training, do caseworkers learn
20 how to interview children?

21 A. They certainly do. They are given
22 certain interview skills. They are regarding how
23 to allege victims of abuse and negligent.

24 Q. And part of these interviewing skills
25 are on how to extract information from children;

1 correct?

2 A. Certainly.

3 Q. And, generally, are they taught to be
4 nice to children?

5 A. Certainly.

6 Q. Being mean to children doesn't
7 generally work; does it?

8 A. It doesn't.

9 Q. And when a CPS case is initiated, an
10 intake occurs; right?

11 A. (Witness moves head up and down.)

12 Q. What is that?

13 A. Intake is from the reception of a call
14 of abuse or negligent, either that has been
15 identified or has been told.

16 Q. And there were three ways that that
17 call can go; correct?

18 A. There are three ways that it can go.
19 And what happens if the intake case manager isn't
20 certain as to what direction a call should go, then
21 they are instructed, in training, to talk to their
22 supervisor.

23 Q. And so that can be stayed, essentially?

24 A. (Witness moves head up and down.)

25 Q. And then the other ones, it can be

1 accepted, or the other one it can be not accepted?

2 A. Exactly.

3 Q. And once an intake happens, what
4 happens next?

5 A. If an intake occurs, and it's accepted,
6 then it's forwarded to the investigation's unit.

7 Q. And what is supposed to happen until
8 the caseworker gets assigned an investigation or an
9 assessment regarding contacting the people involved
10 in the investigation?

11 A. They are to determine the timeframe, in
12 which they are to go out to make contact with the
13 child or the children.

14 Q. Is that a 2-, to 24-hour timeframe,
15 depending on the severity of the allegations?

16 A. Certainly.

17 Q. And so if it's a serious incident, such
18 as a child is actively being sexually abused or
19 maybe going home -- to a home where they're
20 physically harmed, that may be have the
21 face-to-face with the child within two hours?

22 A. Within two hours.

23 Q. And then maybe something not as
24 important -- it's all important; right?

25 A. It's all important.

1 Q. But not as serious, it could be as late
2 as 24 hours?

3 A. As late as 24, if it's not severe.

4 Q. And let's say they can't find a family,
5 are folks taught what to do next?

6 A. Certainly.

7 Q. What are they supposed to do?

8 A. They are to exhaust all measures in
9 order to find those children, or that child that is
10 allegedly the victim of abuse and negligent. The
11 staff, again, with their supervisors and take every
12 measure, including contact law enforcement.

13 Q. Let's say a parent won't let the
14 caseworker see a child, are they taught what to do
15 with that?

16 A. They are.

17 Q. What can they do?

18 A. Well, again, they are not able to see a
19 child, they are to consult with their supervisors
20 to receive instructions from their supervisor.

21 Q. And does the policy and the training
22 teach about obtaining a warrant?

23 A. No. We actually talk about talking to
24 law enforcement about the warrant, but the actual
25 case manager themselves obtain the warrant.

1 Q. Hold on. I'm going to direct you to
2 refresh your memory.

3 A. Okay. Please do.

4 Q. Up top there are Bate Stamp numbers in
5 red. Are you familiar with those?

6 A. Yes.

7 Q. Turn to Page 47 and 41, please, sir.
8 I'm going to let you look at that.

9 MR. BUTCHER: Your Honor, I would like
10 to move this into evidence as Plaintiffs' 5.

11 THE COURT: Any objection?

12 MR. BUTCHER: 47, 41.

13 MR. WOODINGTON: I'm just trying to
14 make sure what it is.

15 THE WITNESS: Okay. I'm there.

16 MR. DAVIDSON: The 63-67 is the whole
17 statute.

18 THE COURT: So you're moving the entire
19 manual in?

20 MR. BUTCHER: Yes, ma'am.

21 THE COURT: And so there's no
22 objection; is that right?

23 MR. WOODINGTON: No, ma'am.

24 THE COURT: Oh, I understand 47, 41.

25 (Plaintiffs' Exhibit No. 5 was entered

1 without objection.)

2 BY MR. BUTCHER:

3 Q. And down at the bottom of four, when a
4 parent or someone else isn't cooperative with
5 allowing intervention or inspecting the home,
6 producing the child, isn't it true that the DSS
7 County lawyer or law enforcement could obtain an
8 inspection warrant for the family court?

9 A. Yes. After consultation with the
10 supervisor or the case manager.

11 Q. All right. And is that not taught in
12 the basic training?

13 A. Yes, it is.

14 Q. So within that 2-, to 24-time period of
15 initially being the time of the case, if school is
16 in session, does DSS train its employees to go to
17 school first before seeing anyone in the family?

18 A. Yes. If the child is in school, they
19 are asked to locate the child and conduct an
20 interview with the child, whether that child is in
21 school or at home.

22 Q. And it doesn't matter how serious the
23 case is or anything? Just generally, they are
24 taught to go to the school?

25 A. They're not necessarily taught to go to

1 the school. They're taught to find the location of
2 the child, and then conduct an interview.

3 Q. When DSS teaches best practices, do
4 they teach that is the best place to interview
5 children?

6 A. Well, not necessarily the school
7 location. The best practice is to conduct an
8 initial interview with the child at home. If the
9 child is in the school, then certainly make contact
10 at school. If the child may be home, you can make
11 contact at home, as well.

12 Q. How about for follow-up interviews?

13 A. Follow-up interviews, that's fine.
14 That's what they're taught. So you conduct
15 interviews with children.

16 Q. Even if the case is a year old, it's
17 okay to continue to interview children in school?

18 A. It depends on whether the case is open
19 or not.

20 Q. Okay. If the case is open?

21 A. If the case is open, they can certainly
22 interview a child at school or in the home, or
23 whatever location the child may be residing.

24 Q. And does a caseworker need to obtain
25 parental permission before interviewing the child?

1 A. During the course of investigation?

2 Q. Yes, sir.

3 A. No, they do not.

4 Q. How about afterwards, if the case is in
5 treatment or its on appeal, if it's on
6 administrative appeal, or if it's going to family
7 court?

8 A. If it's going to place the child in
9 jeopardy, then it's not required.

10 Q. So there has to be some type of reason
11 for the protection and the safety of the child --

12 A. Certainly.

13 Q. -- to, you know, ignore it as to
14 whether or not a parental permission is needed?

15 A. Well, not necessarily. One expectation
16 is once that case is out of investigation and
17 placed in treatment or a family preservation, a
18 case plan is developed by the case manager and the
19 supervisor. And the parents that are involved, or
20 caregivers -- and they make those determinations as
21 to when the next visits will be taken place.

22 The best practice would be to involve
23 the parent, if they don't think that the child is
24 in harm's way.

25 Q. Now, you're talking with the case plan.

1 And is that also referred to also as a treatment
2 plan?

3 A. Yes, sir.

4 Q. Now, some treatment plans are
5 voluntary; correct?

6 A. Some are voluntary.

7 Q. Okay. And others are forced upon the
8 parents by the family court; correct?

9 A. I would not say forced, but mandated.
10 Because, again, of the safety of the child.

11 Q. That wasn't an articulate of putting
12 it?

13 A. No.

14 Q. But if a parent isn't cooperative, or
15 if the agency believes that the parent needs a
16 higher level of supervision, they can take them to
17 court to mandate if they do certain things?

18 A. Certainly. Certainly.

19 Q. All right. And sometimes there is some
20 period between a finding of a case and the time
21 that it goes to court; correct?

22 A. There is.

23 Q. And sometimes from the time it goes to
24 the court to the time a judge makes a finding
25 against to cooperate with DSS could be months or

1 years; right?

2 A. Depending on the case.

3 Q. So during that time period, does DSS
4 teach its caseworkers that they can interview
5 children at school without permission from the
6 children's parents?

7 A. Certainly. If it's still an open case,
8 they are required to maintain monthly contact with
9 the children.

10 Q. And can they use those interviews to
11 gather evidence against the parents in cases?

12 A. They can use those interviews
13 pertaining to the case.

14 Q. Does that mean they can -- they can
15 gather evidence during those interviews?

16 A. They can gather information that the
17 child shares with them, of course.

18 Q. All right. And these general
19 questions, they range from asking whether parents
20 use drugs, whether there's domestic violence, those
21 types of things?

22 A. Anything pertaining to the household
23 dynamics that may assist in determining whether the
24 allegations are true or false.

25 Q. And its in Policy 719. It's Bate

1 stamped Number 4723. Starting with Paragraph 15.

2 MR. DAVIDSON: 4723, Paragraph 15.

3 BY MR. BUTCHER:

4 Q. And so those two pages, that's kind of
5 some of the subject matters that they ask children
6 during these interviews; correct?

7 A. That's correct.

8 Q. All right. If a child is really in
9 danger and a caseworker has some belief that a
10 child is in danger, should they either report the
11 information to law enforcement and ask them to EPC
12 the child or ask the county lawyer to get an ex
13 parte order from a family court judge to take the
14 child into custody?

15 A. It just depends on the direction that
16 case manager's supervisor provides for that case.
17 They would either ex parte or go directly to law
18 enforcement.

19 Q. You answered. I just missed that. And
20 if a case is indicated against a parent and the
21 case is then transferred to --

22 Is it called treatment of family
23 preservation?

24 A. Family preservation.

25 Q. It's been called treatment in the past;

1 right?

2 A. Yes.

3 Q. And with that they create the case plan
4 you talked about?

5 A. Yes, sir. Yes, sir.

6 Q. And what happens if a parent refuses to
7 participate?

8 A. Well, then if a parent refuses to
9 participate, then that case manager asks staff that
10 with their supervisor. And it may be a matter of
11 having to take actions ask for participation from
12 the parent. And if the parent refuses, then
13 further decision may takes place.

14 Q. And if a parent won't sign a release or
15 give information to DSS, can they file a case
16 against a parent and issue subpoenas?

17 A. Certainly.

18 Q. Or ask for a warrant?

19 A. They can certainly ask for those
20 things.

21 Q. What's marked as 1, which is in front
22 of you, I just -- quickly for the Court -- I'm sure
23 the Court already knows. But I just wanted to go
24 over it, just the front page with you.

25 Is this called dictation?

1 A. It is.

2 Q. And explain to the Court what action
3 date, action time, input time, input date is.

4 A. Basically, that's when the information
5 is placed into our CAP system to record any
6 documentation of any findings.

7 Q. And the action date and time that's
8 when it happened, and the input is when someone
9 takes it in?

10 A. Exactly.

11 Q. And the worker, that lists the
12 caseworker?

13 A. The case manager.

14 Q. The case manager?

15 A. Uh-huh.

16 Q. And under action, that can be -- those
17 are fields that you pull down in the Cap system; is
18 that correct?

19 A. That's correct.

20 Q. And under recipients, that's the
21 family?

22 A. That would be the family.

23 Q. And dictation is description of what
24 happened?

25 A. Yes.

1 MR. BUTCHER: Hold on one moment.

2 BY MR. BUTCHER:

3 Q. And here's what I wanted to ask you.
4 Where does the authority come from that allows DSS
5 to interview children after an investigation is
6 completed without permission of a parent?

7 MT. WOODINGTON: That's kind of a legal
8 question.

9 THE COURT: If you know the answer, you
10 can answer it.

11 THE WITNESS: I'm not aware of the
12 legal authority.

13 BY MR. BUTCHER:

14 Q. That's fine. And you're the head
15 training for DSS?

16 A. I am.

17 Q. I appreciate it.

18 MR. BUTCHER: One moment. Would you
19 answer any questions from the School District.

20 MS. FITIPALDI: I'll let DSS go first.

21 THE COURT: All right.

22 CROSS EXAMINATION

23 BY MR. WOODINGTON:

24 Q. Dr. James, just a couple of questions.
25 If there is no allegations that a child has been

1 abused and neglected, does DSS send an investigator
2 out to their school?

3 A. If there are no allegations, we do not
4 send case manager out to the school.

5 Q. And after the investigation has been
6 concluded, and it's now in this condition of being
7 an open case, I believe you testified they can go
8 and interview a child at that point?

9 A. Yes, they can.

10 Q. If the open case is closed, again, if
11 an open case has been closed, does DSS then go out
12 and interview the children at that point?

13 A. After the case is closed we do not send
14 case managers out to interview the children.

15 Q. Is it DSS's position that DSS can
16 interview students anytime or no reason at all?

17 A. No, sir.

18 MR. WOODINGTON: That's all I have.

19 THE COURT: Any questions?

20 CROSS EXAMINATION

21 BY MS. FITIPALDI:

22 Q. Just one or two. Hi, Mr. James, how
23 are you?

24 A. I'm fine.

25 Q. My name is Susan Fitipaldi. I'm an

1 attorney for the School District. I just have a
2 question about training for DSS case managers.

3 Are they allowed to share information
4 with personnel at the School District when they
5 come to interview the children?

6 A. They are to keep it confidential. But
7 if it's event of placing a child in harm's way,
8 then what we ask them to do is make sure that they
9 staff those cases with their supervisor. And if
10 it's necessary to share information with the School
11 District. And that determination is made by that
12 supervisor. But, typically, it's not common that
13 they do so.

14 Q. Are you aware of situations or times
15 when School District personnel inquires about the
16 status of an investigation or what the allegations
17 are, or where it is, possibly, in the court system?
18 Does that come to your attention; do you know?

19 A. That doesn't come to my attention.

20 Q. Do you think that caseworkers would
21 normally -- or is it your experience that they
22 share that information with School District
23 employees when they come to interview children?

24 A. It just depends on the details. If
25 it's generality, then case managers have done so in

1 the past, but they don't give specifics, because
2 it's an ongoing investigation and it might tank the
3 investigation.

4 MS. FITIPALDI: Okay. Thank you.

5 THE COURT: Any redirect?

6 MR. BUTCHER: No, thank you.

7 Thank you Mr. James.

8 THE COURT: Mr James, you may step
9 down.

10 Any objection to him being excused?

11 MS. FITIPALDI: No objection.

12 MR. BUTCHER: No objection. Thank you
13 very much.

14 THE COURT: Call your next witness.

15 MR. BUTCHER: The Plaintiffs calls
16 Jasmine Flemister.

17 THE CLERK: Please raise your right
18 hand. State your full name, for the record.

19 THE WITNESS: Jasmine Flemister.

20 THE CLERK: Do you swear or affirm that
21 the testimony you are about to give will be the
22 truth, the whole truth, and nothing but the truth,
23 so help you God?

24 THE WITNESS: I do.

25 THE COURT: Your witness.

1 DIRECT EXAMINATION

2 BY MR. BUTCHER:

3 Q. And I didn't hear you pronounce your
4 name.

5 A. Flemister.

6 Q. Okay. Great. Who are you employed by?

7 A. South Carolina Department of Social
8 Services.

9 Q. From March 2017 until the end of
10 June 2018, were you employed by the Agency?

11 A. Yes.

12 Q. And how long have you been at the
13 Agency?

14 A. Four years.

15 Q. And what is your position at the
16 Agency?

17 A. Currently, I'm the Foster Care
18 Supervisor.

19 Q. And before that, what did you do?

20 A. Preservation case manager.

21 Q. And you did that for how long?

22 A. For two years.

23 Q. And did you do anything else with DSS,
24 before then?

25 A. No.

1 Q. As a family preservation case manager,
2 did you have to do on-call on child protective
3 services?

4 A. You said on-call?

5 Q. Yes, ma'am.

6 A. Yes.

7 Q. So when you're on-call, sometimes that
8 would be during holidays or weekends, and you would
9 field the initial inquiry -- or the initial
10 assignment and do a face-to-face, when there's a
11 report of abuse or neglect; correct?

12 A. Correct.

13 Q. And whether you're in foster case, or
14 family preservation, or CPS, you have to be trained
15 in basic child welfare services; correct?

16 A. Yes.

17 Q. And how long did your basic child
18 welfare services course last, ma'am?

19 A. Six weeks.

20 Q. And when did you do that?

21 A. I started in May and I believe I went
22 to training in the end of July.

23 Q. And was that in '16?

24 A. Yes, 2016.

25 Q. And you graduated from college?

1 A. Correct.

2 Q. And do you have a background in social
3 work or human services?

4 A. I have a Bachelor's in Psychology and
5 my Master's in Human Behavior.

6 Q. And to be a case manager at DSS, you
7 don't have to have a social workers' license;
8 correct?

9 A. Correct.

10 Q. Now, you were not assigned this case
11 initially, it was transferred to you from
12 investigations to your job in family preservation;
13 correct?

14 A. Correct.

15 Q. All right. But once that case is
16 transferred to you, you're responsible for the
17 entire case file and you have to read the entire
18 case file; correct?

19 A. Correct.

20 Q. And the dictation in the case file,
21 that's all kept in the regular, ordinary course of
22 business; correct?

23 A. Yes.

24 Q. And you rely on the information in the
25 case file to make your decisions; correct?

1 A. Yes, initially.

2 Q. And it can change; right?

3 A. Correct.

4 Q. You learn new information and some of
5 the information may become invalid; right?

6 A. It can.

7 Q. Now, this case was --

8 I'm going to hand you Exhibit 3. What
9 is 3, ma'am?

10 A. This is dictation for -- no, this is an
11 intake summary.

12 Q. And the intake summary we talked about
13 just a minute ago with Mr. James, that's when they
14 received a report of abuse or negligent; correct?

15 A. Correct.

16 Q. And once that got accepted, it got
17 assigned to a caseworker; correct?

18 A. Yes.

19 Q. And the caseworker was?

20 A. Carrie Ann Halstrung.

21 Q. And so she did the investigation or
22 assessment?

23 A. Correct.

24 Q. And throughout the investigation that
25 was ultimately indicated against Kaci May; correct?

1 A. Correct.

2 Q. Now, in June of 2018 DSS dismissed the
3 case and they overturned the finding -- or they
4 indicated the case against Ms. Kaci May; correct?

5 A. Correct.

6 Q. To your knowledge, does Kaci May or
7 Warren May, who is now deceased, do either one of
8 them have any indicated cases against them?

9 A. To my knowledge?

10 Q. Yes, ma'am.

11 A. Yes.

12 Q. What was that?

13 A. Not because it was overturned.

14 Q. Right.

15 A. So then, no, because it was overturned.

16 Q. Now, what is your understanding of
17 being able to interview children at school? Can
18 you go any time you want to, for any reason?

19 A. When there's a family preservation case
20 or an open investigation, that's my role.

21 Q. Now, we don't really need to worry
22 about foster care, because when kids are in foster
23 care they're in the custody of the State?

24 A. Correct.

25 Q. And that's DSS's kid, they can do

1 whatever they want with them; right?

2 A. Correct.

3 Q. I'm being a little facetious there.

4 But regarding an investigation or
5 family preservation, DSS can visit a child any time
6 they want to?

7 A. Yes, if there's an open case.

8 Q. Does it matter if the investigation,
9 the 45 days or 60 days of the investigation is
10 closed and there's already been a determination?

11 A. We can still visit them, if the case is
12 open to family preservation.

13 Q. Now, under family preservation or
14 treatment, if the case has gone to family court and
15 there's been a finding against parents, and there's
16 a court ordered treatment plan, there's usually
17 something put in the order that says DSS is to have
18 access to the children to interview whenever they
19 want; right?

20 A. I've never seen it stated in a court
21 order, per se, to say that we can't -- an order to
22 have access to the children.

23 Q. Something like that?

24 A. Yes.

25 Q. All right. So there is a time in

1 family preservation when there's a court order
2 done, where DSS has the legal authority to go in
3 and see a child any time they want to?

4 A. Yes.

5 Q. And often times, do the court orders
6 say, DSS can obtain any records they want on the
7 child?

8 A. Yes.

9 Q. And it also says on the parents too;
10 right?

11 A. Correct.

12 Q. Now, Exhibit 1 is -- that all of
13 Exhibit 1 is dictation in this case. When it's --
14 it's inputted on the CAP system, that's the data
15 base for DSS?

16 A. Yes.

17 Q. Can someone just go in and change it?

18 A. No.

19 Q. All right. And is it considered a
20 legal record?

21 A. That I don't know.

22 Q. That's fine. Did you review all of
23 Ms. Halstrung's dictation once you got the case?

24 A. Yes.

25 Q. And then the rest of the dictation that

1 you put in, or other caseworkers put in, you
2 reviewed it as it came in; right?

3 A. Correct.

4 Q. And when someone would put dictation
5 in, such as a supervisor or another caseworker,
6 would you get some type of flag in your system for
7 you to review it?

8 A. No.

9 Q. So what did you do, just make time to
10 review dictation in certain cases during the week?

11 A. Well, if I see dictation -- typically,
12 we are the ones that put in -- the case managers
13 are the ones that are inputting the dictation.

14 So there is no flag system -- or there
15 is no flyers for our system that says that someone
16 else would do dictation with someone else's name on
17 it -- then you would review it -- it's in your case
18 and it's not your dictation.

19 Q. You want to know what's going on with
20 your family and your kids; right?

21 A. Correct.

22 MR. BUTCHER: Your Honor, I would like
23 to move Exhibit 1 into evidence as Plaintiff's 1.

24 THE COURT: Any objection?

25 MR. DAVIDSON: No.

1 THE COURT: All right.

2 MR. BUTCHER: I think it was 3. I
3 would like to move that into evidence. That would
4 be the intake.

5 THE COURT: Any objection?

6 MR. DAVIDSON: No objection.

7 THE COURT: All right. They're both
8 in.

9 (Exhibits Nos. 1 and 3 were entered in
10 evidence.)

11 BY MR. BUTCHER:

12 Q. Okay. Ma'am, now, did you have -- save
13 your -- how did you communicate with Ms. May?

14 A. I attempted to -- well, I had several
15 different attempts to make contact with her.

16 As our protocol, I attempted to make
17 contact at her home. When I was unable to make
18 contact with her at home, I reached out to her by
19 telephone. If that was unsuccessful, I was
20 provided an email address for her, in the event I
21 needed to contact her.

22 Q. And so you had emails going back and
23 forth between you and Ms. May; correct?

24 A. A few emails. She stated if I could
25 not get in contact with her, than to email her or

1 to email her attorney.

2 Q. And you had emails with her attorney;
3 correct?

4 A. Correct.

5 Q. And you even asked the county attorney
6 to contact her attorney; correct?

7 A. Correct.

8 Q. And that was Ms. Butcher or Deborah
9 Butcher?

10 A. Yes.

11 Q. All right. Generally, when you have
12 emails between yourself and a client or a client's
13 attorney, or they're important to the case, do you
14 save them and put them in the case file?

15 A. Generally, yes.

16 Q. Did Ms. Halstrung put emails in the
17 case file?

18 A. I can't recall.

19 MR. BUTCHER: If you'll give me a
20 second. I'm going to hand you what's marked as 5.
21 BY MR. BUTCHER:

22 Q. Ma'am, I'm not going to try and get you
23 testify about emails Kaci May sent to
24 Ms. Halstrung.

25 What I would like you do is -- it's

1 about -- the Bate stamps are not in order. I
2 promise you it was in chronological order. But
3 it's about 25 pages in. And it's a June 15th
4 email. And that's where it begins with you.

5 MR. COURT: Are you referring to 4203?

6 MR. BUTCHER: Yes, ma'am.

7 BY MR. BUTCHER:

8 Q. Okay. So, Ms Flemister, beginning at
9 4203 until the end, do you have any concerns that
10 any of these emails were not correspondence that
11 had with Kaci May or her attorneys?

12 A. Can you repeat the question? I'm
13 sorry.

14 Q. Beginning on 4203 and going to -- or
15 going to second to last page or third to the last
16 page, do you have any concerns that these --

17 Do you have any knowledge as to whether
18 or not were e-mails that you had between yourself,
19 Kaci May and Deanne Grey and Deborah Butcher?

20 A. Yes, those were the emails.

21 Q. So this is all the correspondence that
22 you had?

23 A. Yes.

24 Q. And during the family court case, did
25 you put together information to send to me or to

1 Kaci May's attorney, from the case file?

2 A. I don't recall.

3 Q. Now, once you were assigned the case,
4 did Kaci May tell you that she didn't want you to
5 come to the house?

6 A. I do recall her telling me after I had
7 already attempted to make contact at the home, she
8 then stated that I needed to contact her attorney
9 to schedule visitations.

10 Q. And did you try to go back several
11 other times?

12 A. I do not recall. I believe -- I do not
13 recall.

14 Q. And in order to --

15 A. I can answer that question now that I
16 have reviewed my notes.

17 Q. Okay.

18 A. So after I made an attempt to her home,
19 the initial time, I did not attempt myself to visit
20 her home again. I did attempt to schedule visits
21 with her.

22 Q. All right. Now, going to Exhibit 1,
23 which is the dictation on July 5th, was that the
24 first time you contacted Kaci May or attempted to?

25 I'm sorry it's not. But looking at the

1 July 5th dictation, did you attempt to go to Kaci
2 May's home?

3 A. I did.

4 Q. And no one was there, or no one
5 answered the door?

6 A. Correct.

7 Q. And then on June -- July 14th at 10:58,
8 did Kaci May send you an email saying, it's my
9 understanding you're at my home now, I want to make
10 clear again that -- well, she doesn't want you at
11 the house; correct?

12 A. Can you repeat the date? I'm sorry.

13 Q. July 14th. It's the next page. It's
14 at 10:58 a.m.; correct?

15 A. Correct.

16 Q. And then at 12:00 that day the
17 dictation says that you went to the home; correct?

18 A. Correct.

19 Now, I can't recall if when she called
20 me and stated that it was her understanding that I
21 was at her home. I cannot recall if I was at her
22 home at 10:58.

23 Q. And on July 31st -- this is all in
24 chronological order, you can scoot forward a few
25 pages -- did you send a deputy out to Kaci May's

1 house?

2 A. Yes, for a welfare check.

3 Q. And did you go with him?

4 A. I don't recall, but I don't believe I
5 did.

6 Q. And on August 28th, do you know if you
7 sent a deputy to the May's home?

8 A. August 28th?

9 Q. Yes, ma'am. There's a bunch of
10 dictations that day. Yeah, 11:45 a.m.

11 A. I did request a welfare check due to
12 not being able to obtain any information on the
13 children that are not school-aged children.

14 Q. Now, you can't just walk into someone's
15 home, can you?

16 A. No.

17 Q. And the police can't just walk into
18 someone's home, can they?

19 A. That I'm not sure.

20 Q. But you are trained that you can obtain
21 a warrant, or an inspection warrant if you want to
22 talk to -- or if you want to see a child in
23 someone's home or if you want to go in someone's
24 home to look around; right?

25 A. Correct.

1 Q. Did you ever ask or apply for an
2 inspection warrant?

3 A. I did not. We attempted to work with
4 our families before taking it to those measures of
5 requesting search warrants.

6 And that was my attempt to work with
7 Ms. May or through her attorneys.

8 Q. And the case went on another 10 months
9 and you never asked for an inspection warrant;
10 correct?

11 A. Yes, I guess it would be 10 months.

12 Q. Now, DSS filed a lawsuit on September
13 14th, 2017 against Ms. May in family court;
14 correct?

15 A. On what date?

16 Q. Actually, I'll help you out. It's
17 number 12. Do you recognize what that is?

18 A. Yes.

19 Q. Okay. What is that?

20 A. This is the summons and complaint from
21 Dorchester County for non-emergency removal.

22 Q. Okay. When you first became a
23 caseworker for DSS and you went through child
24 welfare basic, they taught you about documentation;
25 correct?

1 A. Correct.

2 Q. And documentation is important?

3 A. Yes.

4 Q. And it is important because you may
5 need to rely on it in the future?

6 A. Yes.

7 Q. Did they teach you -- did they
8 extensively remind all the students that regarding
9 documentation -- essentially, if it happened to
10 document it?

11 A. Can you repeat that? I'm sorry.

12 Q. Regarding documentation, did they teach
13 you to document everything?

14 A. Yes.

15 Q. All right. And do they teach you that
16 certain reports go to the court and have to be
17 truthful?

18 A. Yes.

19 Q. And did you submit the attached court
20 information sheet to legal? And was that submitted
21 to the family court?

22 A. I did.

23 MR. BUTCHER: Your Honor, I would like
24 to move Number 12 in as Plaintiff's Exhibit 12.

25 THE COURT: Any objection?

1 MR. DAVIDSON: No, Your Honor.

2 (Exhibit No. 12 was moved in without
3 objection.)

4 BY MR. BUTCHER:

5 Q. Now, if the complaint for removal --
6 I'm sorry, not the complaint for removal.

7 In the court information sheet, Part 5,
8 regarding the current situation, can you read the
9 last paragraph of it's on Part 5? It's on Page 3
10 of the information sheet.

11 A. You mean where it says the Department?

12 Q. Yes, ma'am.

13 A. The Department has been unable to
14 access the minor children's medical or mental
15 health records. Mr. and Ms. May have not
16 cooperated with requests, as the minor children
17 have forensic interviews to determine their
18 wellbeing.

19 Q. Now, throughout the time you had been
20 the family preservation worker, and during the
21 assessment period, neither you, nor Ms. Halstrung
22 had ever asked Kaci May to present the kids for a
23 forensic interview; isn't that true?

24 A. I know that I did not.

25 Q. And is it documented anywhere in any of

1 the dictation or any of the emails that you had
2 with the family?

3 A. That I had?

4 Q. Yes, ma'am.

5 A. No.

6 Q. Do you know if it's documented in
7 anywhere in Ms. Halstrung's notes or emails?

8 A. I cannot recall.

9 Q. Do you know where you got that
10 information?

11 A. I would say typically from a staffing
12 or from dictation, but I can't recall the exact
13 dictation.

14 Q. And regarding accessing the medical
15 records, you never asked for Ms. May to sign a
16 HIPPA release or to provide records, or mental
17 health records?

18 A. I was never able to speak with Ms. May.

19 Q. And in your contact with her attorneys
20 and then your contact with your attorney, you never
21 asked your attorney, or Ms. Butcher to provide this
22 information or a release; correct?

23 A. If I could recall correctly, I had one
24 conversation, via email, maybe telephone with
25 Ms. Butcher to set up a conference, but it never

1 happened.

2 Q. But nonetheless, you have no basis for
3 making that statement to the family court?

4 MR. WOODINGTON: Objection; Your Honor.

5 THE COURT: Let's move on, Counsel. I
6 understand where you're going with it.

7 MR. BUTCHER: Okay.

8 BY MR. BUTCHER:

9 Q. Now, during any of your interviews with
10 the children at the schools, did they ever tell you
11 that they did not want to talk to you?

12 A. In November, on November 20th, 2017.

13 Q. Do you remember which child said that?

14 A. I attempted contact at Sand Hill
15 Elementary, which would have been C.B.M., A.R.M.
16 A.R.M., and J.W.M..

17 And C.B.M. stated that they were not
18 allowed to speak with me. A.R.M. A.R.M., she came in
19 first. She just spoke and said no more. And then
20 J.W.M., I did say hello to him and looked at him,
21 and he went back to class.

22 Q. Because you got the case over the
23 summer, you didn't have a chance to interview them
24 at school until August; correct?

25 A. Correct. I mean, other than my other