

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

Case No.: 0:20-CV-61169

ALYSHA PRINCESS CESAIRES, on her own behalf
and on behalf of her child, E.B., a minor

Plaintiff,

v.

SHEVAUN HARRIS, in her official capacity as
Secretary of the FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES.

Defendant.

/

Introduction

A. Plaintiffs, ALYSHA PRINCESS CESAIRES, on her own behalf, and on behalf of her child, E.B., a minor (hereinafter "Plaintiffs"), and SHEVAUN HARRIS, in her official capacity as Secretary of the FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, are committed to full compliance with Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101; as well as Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504"). This Agreement is intended to ensure that parents with disabilities have a full and equal opportunity to participate in the programs and services within the dependency system as defined and operated in accordance with Fla. Stat. Chapter 39 et. seq. and applicable Administrative Codes as amended from time to time and the FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES (hereinafter "DCF") Operating Procedures as amended from time to time.

B. On June 12, 2020, Plaintiffs filed a Complaint against DCF relating to the attempted removal of her newborn infant because of misconceptions about her disability requesting changes to current policies and procedures in order to address individualized assessment of a parent with a disability and not to rely on stereotypes about parents with disabilities in dependency proceedings.

C. Since July of 2020, Plaintiffs and DCF have engaged in an open dialogue about the allegations with the Plaintiffs to further ensure that appropriate policies and practices are in place to ensure the provision of services for parents with disabilities who are involved in the dependency system.

D. In order to resolve all issues pending between Plaintiffs and DCF without the expense, risks, delays, and uncertainties of litigation, the Plaintiffs and DCF agree to the terms of this Settlement Agreement as stated below. By reaching the settlement, DCF does not admit or concede any wrongdoing, liability, or improper conduct of any nature in connection with any facts or claims that have been or could have been raised against it in the instant lawsuit or in any other forum. DCF and Plaintiffs consider it desirable for the instant lawsuit to be settled and dismissed with prejudice because the Settlement will: (a) provide substantial benefits to the Plaintiffs; (b) resolve the issues presented in the lawsuit as to DCF; and (c) finally put Plaintiffs' claims and the underlying matters to rest as to DCF without undue expense to Plaintiffs and DCF, while reducing the burdens and uncertainties associated with protracted litigation of those claims.

E. Plaintiffs and DCF acknowledge that the Court has jurisdiction over this case and authority to enforce the terms of this Settlement Agreement as set forth herein.

F. DCF is an Agency of the State of Florida, that administers and provides a child welfare program for children and families throughout the State of Florida. DCF is a "public entity" within the meaning of Title II of the ADA. 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104 in keeping with Fla. Stat. Chapter 39 et. seq. as amended from time to time, applicable Administrative Codes as amended from time to time and DCF's Operating Procedures as amended from time to time. DCF is a recipient of financial assistance from the Department of Health and Human Services, including grants under Titles IV-B and IV-E of the Social Security Act, within the meaning of Section 504, 29 U.S.C. § 794 and 45 C.F.R. § 84.3, and is therefore subject to the requirements of Section 504. DCF provides services, programs, and activities within, *inter alia*, the meaning of Title II of the ADA and Section 504, and is specifically authorized to adopt, amend, and repeal rules and guidelines pursuant to Chapter 39, Florida Statutes, to facilitate its goal to respond to citizen concerns about children who may be victims of abuse, neglect or abandonment; determine whether children are safe, unsafe or at risk; and provide the appropriate interventions to achieve safety, permanency and well-being. For purposes of this settlement and per applicable Florida Statutes, DCF contracts with Community Based Care Lead Agencies to perform foster care and related services in the State. However, it is expressly understood that nothing in this Agreement is intended to imply or impute an agency relationship between DCF and any private Community Base Care Lead Agency performing foster care and related services.

G. No person or entity is intended to be a third-party beneficiary of the provisions of this Settlement Agreement for purposes of any other civil, criminal, or administrative action, and, accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Settlement Agreement in any separate action. This Settlement Agreement is not intended to impair or expand the right of any person or organization to seek relief against DCF or its officials, employees, or agents.

H. None of the terms in this Agreement is intended to limit the obligations of DCF to comply with the laws or regulations under Section 504 of the Rehabilitation Act or

Title II of the Americans with Disabilities Act or to hinder DCF from performing its obligations under Chapter 39, Florida Statutes. DCF will base decisions about removal of a child on an individualized assessment of the parent with a disability and objective facts.

I. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1345; and 42 U.S.C. §§ 12131-12132. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

I. Definitions:

1. **Rules of Definition.** Unless otherwise indicated, defined terms include the plural as well as the singular. Unless the context otherwise requires, a reference to any Person includes its successors and assigns; the words "include," "includes" and "including" are not limiting and shall be deemed to be followed by the words "without limitation" whether or not in fact followed by such words or words of like import; and the terms "hereof," "herein," "hereunder" and comparable terms refer to this entire Settlement Agreement with respect to which such terms are used and not to any particular article, Section or other subsection or subdivision thereof. Words or phrases not specifically defined herein, which currently are defined by Florida or Federal law, shall take on those definitions or interpretations as applicable.

2. **Defined Terms.** As used in this Settlement Agreement, and unless otherwise defined hereinunder, the definitions in Section 39.01, Florida Statutes, and 28 C.F.R. § 35.104 are incorporated herein.

- a. Programs and Services include, but are not limited to, investigations, assessments, diversion services, provision of in-home services, removal of children from their homes, out-of-home care, case planning and service planning, visitation, guardianship, adoption, foster care, reunification services, child welfare hearings, custody hearings, and proceedings to terminate parental rights.
- b. "Auxiliary Aids and Services" are defined in the regulation implementing Title II of the ADA, 28 C.F.R. § 35.104.
- c. "Disability" is defined pursuant to Title II of the ADA, 42 U.S.C. § 12102, and its implementing regulation, 28 C.F.R. § 35.108.
- d. "Disability discrimination," as used in this Agreement, refers to violations of Title II of the ADA and Section 504 and their implementing regulations.
- e. For purposes of this Agreement, the term "reasonable

modification" from the Title II regulation, 28 C.F.R. § 35.130(b)(7), is used interchangeably with the term "reasonable accommodation" under Section 504. The term "reasonable accommodation," for purposes of this Agreement, reflects its meaning under Section 504 and does not reflect the meaning of this term under Title I of the ADA.

II. Terms of Settlement

NOW THEREFORE, in light of the foregoing, which is incorporated herein and made a part hereof, and in consideration of the mutual promises, agreements and covenants contained herein, the sufficiency and receipt of which are hereby acknowledged, it is hereby stipulated and agreed, by, between the Plaintiffs and DCF, that the instant lawsuit and the matters raised by it hereby will be settled, compromised, and dismissed with prejudice on the merits and with prejudice as to DCF only on the following terms and conditions, by stipulation of the Plaintiffs and DCF:

A. Policies and Procedure

1. DCF's Secretary or designee will consult with DCF's Civil Rights Office regarding DCF's Civil Rights Compliance Plan which is CFOP 60-16 – Methods of Administration for Federal Participation: Chapter 3 – Reasonable Modifications for Auxiliary Aides and Services for Disabled Persons (hereinafter "CFOP 60-16") to ensure an equal opportunity to benefit from programs of recipients receiving federal financial assistance including developing policies and procedures and protocol to implement the plan.

2. CFOP 60-16 shall contain the following terms:

- a. The duty to provide reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.
- b. In determining whether a particular aid or service would result in undue financial and administrative burdens, DCF takes into consideration the cost of the aid or service in light of all resources available to fund the program, service, or activity and the effect on other expenses or operations. The decision that a particular aid or service would result in an undue burden or fundamental alteration must be made by the DCF Secretary or designee and must be accompanied by a written statement of the reasons for reaching that

conclusion. DCF still must ensure services are provided to the maximum extent possible.

3. CFOP 60-16 shall contain a section stating that no individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of the Department and its local agencies and contractors and have an equal opportunity to participate in the most integrated setting in all Department and Contractor programs and activities.

4. Child welfare professionals shall make reasonable efforts when determining which programs and/or services are recommended for the family, that an individual assessment of a parent's disability is obtained prior to referring the family for services, and that the provision of any reasonable accommodation needed by a parent with a disability is made in order that the disabled parent can participate in the recommended programs and/or services. The methods of performing such assessment may include:

- a. Investigation of the needs or accommodations requested by the parent with a disability and of any known collateral sources who assist the parent with a disability.
- b. Communications with or records from the parent with a disability's known treating medical or mental health professional(s) as authorized by the parent or a legally authorized individual on the parent's behalf.
- c. Obtaining documents evidencing the parent's history of disability and prior accommodation needs of the parent, such as educational records, IEP or 504 plans, medical records, Agency for Persons with Disabilities records, Department of Vocational Rehabilitation records, if such documents exists and can be obtained and as authorized by the parent or a legally authorized individual on the parent's behalf.
- d. An individualized assessment of the parent with a disability provided by a professional with knowledge of the individual parent's disability and the appropriate reasonable accommodations that can be provided to such parent within the child welfare system as authorized by the parent or a legally authorized individual on the parent's behalf.

5. After an individualized assessment of the parent is complete, the persons designated to work with the family in the child welfare system including, but not limited to, child protective investigators and case managers, will determine which services, if any, are appropriate for the safety of the child and provide referrals for the appropriate services.

6. Each DCF Regional Office shall maintain a directory of the following:

- a. The names of qualified professionals known by the DCF Regional Office who may be available to perform an individualized assessment of parents with a disability in each region.
- b. Listings of available providers of assistive technologies (i.e. Faast.org, videophones, tty/tdd, brailers, etc...)
- c. List of providers of interpreter services, CART.
- d. Contact information for Medicaid, Medicaid waiver services, Department of Vocational Rehabilitation Services, the local public school system, known local agencies working with persons with disabilities.

7. DCF's Civil Rights Officers are responsible for reviewing and resolving, parents with disabilities' requests for reasonable accommodations and auxiliary aids and services; assisting DCF staff, including child protective investigators, as needed, regarding the handling of such requests; and for ensuring that, when necessary to avoid discrimination on the basis of disability, reasonable accommodations or auxiliary aids and services requested are provided in an appropriate and timely manner in accordance with the ADA and Section 504. The Plaintiffs and DCF acknowledge that DCF's Civil Rights Officers and DCF employees receive requests from parents with disabilities for reasonable accommodations and auxiliary aids and services orally and in writing. The Plaintiffs and DCF further acknowledge that certain of the aforementioned requests, consideration and granting of the requests may not be recorded due to the nature of and timing of granting of the request.

B. Training and Implementation –

1. DCF will include the following language in DCF's Child Welfare Operating Procedures:

The Department of Children and Families and their employees, contracted providers, and sub-contracted providers, will not base decisions about child safety actions on stereotypes or generalizations about parents with disabilities, or on a parent's disability, diagnosis, or intelligence measures alone. These decisions are made through an individualized assessment of

the parent with a disability and objective facts relating to the danger threats impacting the child. If necessary and reasonable, accommodations must be provided to ensure parents with disabilities can fully participate in the programs and services of the dependency system.

2. Within twelve months of the effective date of this Agreement, DCF will develop and implement training modules to train DCF's Child Protective Investigators, DCF's Child Protective Investigator Supervisors, DCF's Management, and all DCF employees in child protective decision making roles of DCF's Child Protective Investigative units, departments, and or divisions, to dispel stereotypes about parents with disabilities, to learn to recognize a parent's potential disability, how to evaluate for a parent's potential disability and how to develop and implement reasonable accommodations for parents with disabilities.

3. DCF agrees to offer annually at least one hour of interactive training(s) for the (a) General Counsel, (b) case managers, (c) child protective investigators, (d) supervisors, (e) Children's Legal Services attorneys and (f) management. This training will cover the application of Title II of the ADA and Section 504 to child welfare. The first annual training will be completed within twelve (12) months of the Effective Date of this Agreement, and subsequent trainings conducted every twelve (12) months thereafter.

III. Additional Terms

1. After approval of the Settlement, Plaintiffs and DCF may designate personnel other than Counsel to communicate regarding implementation of the settlement.

2. Arm's Length Transaction. Counsel for Plaintiffs and DCF have negotiated all the terms and conditions of this Settlement Agreement at arm's length. All terms, conditions, and Exhibits in their exact form are material to this Settlement Agreement and have been relied upon by the Plaintiffs and DCF, through Counsel, in entering into this Settlement Agreement.

3. Joint Participation. Plaintiffs and DCF participated jointly in the drafting of this Settlement Agreement, and therefore the terms of this Settlement Agreement are not intended to be construed against either the Plaintiffs or DCF by virtue of draftsmanship.

4. Counterparts. This Settlement Agreement may be executed in several counterparts including via facsimile or electronic signature each of which shall constitute an original and all of which together shall constitute one and the same instrument.

5. Further Acts. The Plaintiffs and DCF, upon the request of either of them, agree to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Settlement Agreement.

6. Court's Continuing Jurisdiction. Plaintiffs and DCF each agree that the Court in which the Action is pending shall have continuing jurisdiction to enforce the terms of this Settlement Agreement.

7. Computation of Time. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement, the day of the act, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a day in which the office of the Clerk of Court is closed, or a legal holiday, in which event the period shall run until the end of the next day that is not one of the aforementioned days. Plaintiffs and DCF each reserves the right to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, and to modify or supplement any notice contemplated hereunder.

8. Entire Agreement; Waiver, Modification, Amendment. No representations, warranties, or inducements have been made to either the Plaintiffs or DCF other than those representations, warranties, and covenants expressly set forth in this Settlement Agreement. This Settlement Agreement hereto constitutes the entire agreement between the Plaintiffs and DCF with regard to the subject matter contained herein, and all prior negotiations and understandings between the Plaintiffs and DCF shall be deemed merged into this Settlement Agreement. No waiver, modification, or amendment of the terms of this Settlement Agreement, made before or after the Court's approval of this Settlement Agreement shall be valid or binding unless in writing, signed by Plaintiffs or DCF, or their Representatives, and then only to the extent set forth in such written waiver, modification, or amendment.

9. Authority of Signators. The person signing this agreement on behalf of the Plaintiffs and DCF represents, warrants, and covenants that he or she has the authority to sign this agreement on behalf of the Plaintiffs or DCF and bind the Plaintiffs or DCF to this Settlement Agreement. Each signer further represents that his or her signature binds the Plaintiffs or DCF to the terms and conditions of this Settlement Agreement.

10. Attorneys Consulted. The Plaintiffs and DCF have fully discussed the terms of and meaning of the signing of this agreement with their respective attorneys and fully understand all of the provisions and effects of this Settlement Agreement.

11. Invalidity. If any provision of this Settlement Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Settlement Agreement shall remain in full force and effect, provided that both Plaintiffs and DCF may still effectively realize the complete benefit of the promises and considerations conferred hereby.

IN WITNESS WHEREOF, this Settlement Agreement has been executed by the Plaintiffs and DCF hereto in multiple counterparts, each of which shall be deemed an original.

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ALYSHA PRINCESS CESAIRe, on her own behalf

1/17/2022

DATE



ALYSHA PRINCESS CESAIRe, on behalf of
her child, E.B., a minor

1/17/2022

DATE



SHEVAUN HARRIS,
in her official capacity as Secretary of the
FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES

1/31/2022

DATE

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Agreement") is made and entered into between ALYSHA PRINCESS CESAIRES on her own behalf and on behalf of her child E.B., a minor (hereinafter "PLAINTIFFS"), and SHEVAUN HARRIS, in her official capacity as the Secretary of the FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, (hereinafter "DCF").

RECITALS

WHEREAS PLAINTIFFS filed a lawsuit in the United States District Court, Southern District of Florida, Fort Lauderdale Division, Case No. 0:20-CV-61169 (hereinafter "THE LAWSUIT") against DCF.

WHEREAS PLAINTIFFS acknowledges that DCF does not admit liability related to THE LAWSUIT and wants to resolve all claims, demands, or rights, known or unknown, which were asserted, or which might have been asserted by PLAINTIFFS and/or any of their beneficiaries against DCF.

NOW, THEREFORE, in consideration of the foregoing, the payment to PLAINTIFFS in the total amount of Thirty Thousand Dollars and No Cents (\$30,000.00), for their attorneys' fees and costs and the promises, mutual promises and agreements set out herein below PLAINTIFFS and DCF agree as follows:

1. PLAINTIFFS agrees to accept the total amount of Thirty Thousand Dollars and No Cents (\$30,000.00), for their attorneys' fees and costs in consideration for the terms set forth in this Agreement. This amount will be paid by the Florida Department of Financial Services on behalf of DCF within thirty (30) days of the full execution of this Agreement.

2. PLAINTIFFS and DCF agree to execute the Settlement Agreement attached hereto as Exhibit A and fully incorporated herein on or before January 31, 2022.

3. PLAINTIFFS agree to dismiss DCF with prejudice from THE LAWSUIT within seven business days of receipt of the settlement monies in paragraph 1 and to file ONLY Exhibit A with the Court.

4. In exchange for, and in consideration of, the promises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PLAINTIFFS and DCF agree as follows:

A. PLAINTIFFS hereby release and forever discharge DCF, Florida Department of Financial Services Risk Management solely as to any claims as to the Florida Department of Children & Families, their employees, and

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attorneys, and assignees (subject to paragraph B, below), from, and covenant never to sue or charge any of them with respect to, any and all charges, claims, demands, damages, actions, causes of action, or lawsuits of any kind or nature whatsoever, whether in law or equity, known or unknown, matured or unmatured, asserted or unasserted, suspected or unsuspected, including, but not limited to: any claims, rights or demands arising out of any oral or written contractual relationship; any and all claims, rights or demands, liabilities, damages, expenses, actions, causes of actions or suits of any kind whatsoever; and any rights, claims, or demands pertinent to any local, state or federal regulation or law, including but not limited to common law or statutory claims of any kind whatsoever, tort claims, negligence claims, 42 U.S.C. Sec. 1983 claims, Title II of the Americans with Disabilities Act ("ADA") 42 U.S.C.. Sec. 12201 claims, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec 794 claims, common law or statutory claims of any kind whatsoever, incidental or consequential claims or damages, expenses incurred, litigation expenses, court costs, attorneys' fees, and any and all other damages or statutory sums whatsoever, known or unknown, compensatory or punitive, which PLAINTIFFS may have had or may now or hereafter have or raise, from the beginning of time until the date of execution of this Settlement Agreement.

B. This Agreement is not intended, nor shall it serve, to release GREGORY TONY in his official capacity as Sheriff of BROWARD COUNTY (including the Florida Department of Financial Services Risk Management as to Broward Sheriff's Office, or any other insurer), which is currently a party to the LAWSUIT, and which shall remain a party to THE LAWSUIT. All claims of the PLAINTIFFS as to GREGORY TONY in his official capacity as Sheriff of BROWARD COUNTY are expressly preserved, excluded from this Agreement, and shall remain pending and in full force and effect. In short, this Agreement does not affect the PLAINTIFFS' claims against GREGORY TONY in his official capacity as Sheriff of BROWARD COUNTY, or any of their insurers, including the Department of Risk Management, in any manner whatsoever for the acts of Broward County Sheriff's Office or any other entity other than DCF.

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C. PLAINTIFFS expressly acknowledge and agree that this release and waiver of rights and claims is knowing and voluntary; that PLAINTIFFS have in fact consulted with their attorneys, regarding the terms of this Agreement; and agree to all the terms of this Agreement.

D. The Parties acknowledge and agree that the monies in this case discussed above in Paragraph 2 is all that PLAINTIFFS is entitled to receive from DCF.

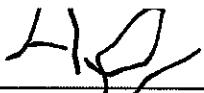
E. This Agreement shall not be assignable or transferable by PLAINTIFFS except as necessary to satisfy any applicable liens.



1/17/2022

ALYSHA PRINCESS CESAIRe, on her own behalf

DATE



1/17/2022

ALYSHA PRINCESS CESAIRe, on behalf of
her child, E.B., a minor

DATE



1/31/2022

SHEVAUN HARRIS,
in her official capacity as Secretary of the
FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES

DATE

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