



Letitia James

Public Advocate for the City of New York

FACT SHEET: *Elisa W. v. City of New York*

Plaintiffs: Ten foster children representing the class of over 11,000 New York City foster children; and Public Advocate Letitia James. The foster children are being represented by Marcia Robinson Lowry, Executive Director, A Better Childhood, and Cravath, Swaine & Moore LLP.

Defendants: The City of New York, New York City Administration of Children's Services (ACS), ACS Commissioner Gladys Carrion, the State of New York, the New York State Office of Children and Family Services (OCFS), and OCFS Commissioner Sheila Poole.

The lawsuit alleges that:

- ACS and OCFS are causing irreparable harm to children in custody by failing to protect children from maltreatment, failing to ensure services provided are effective and of acceptable quality, and failing to ensure appropriate placements. ACS and OCFS fail to provide children in ACS custody with permanent homes and families and reunification within a reasonable time.
- The harms and risks that children in ACS custody suffer result from ACS and OCFS are failing to properly address structural deficiencies in the New York City child welfare system.

About the NYC foster care system:

- There are currently 11,137 children in the NYC foster care system, accounting for almost 60% of children in foster care in NYS.
- ACS is legally responsible for all children in foster care, but has delegated responsibility for the day-to-day care of these children to 29 private agencies, with which it contracts for the children's care.
- NYS ranks 46th out of 48 states and territories for instances of substantiated or indicated maltreatment of children while in foster care.
- Children in NYC spend over twice as long in foster care as children in the rest of NYS and the country. They spend a median of 27.2 months in foster care while children in the rest of NYS spend a median of 15.1 months in foster care and children in the nation spend a median of 12.4 months in foster care.
- Children in NYC spend a median of 12.6 months in foster care before being reunified with their families while children in the rest of NYS spend a median of 10.8 months, and children in the rest of the nation spend a median of 8.6 months, in foster care prior to being returned home.
- It takes longer to be adopted in NYC than in the rest of NYS and every other state in the nation. Children who were adopted in NYC in 2013 spent a median of 55.8 months—over 4.5 years—in foster care prior to adoption.
- In number of days until a child is freed for adoption, NYC ranks last. It takes twice as long to be freed for adoption in NYC as in the rest of NYS (42.2 months v. 22.1 months). It takes 2.5 times as long to be freed for adoption in NYC as in the rest of the nation (42.2 months v. 16.8 months).
- Each year, approximately 1,000 young people “age out” of the NYC foster care system, 80% of whom are on their own with virtually no safety net. Research has shown that children who age out are more likely than their peers to be unemployed, homeless, and incarcerated as adults. Twenty percent of children who aged out of the foster care system in NYC entered a homeless shelter within three years of leaving the foster care system.



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THE PLAINTIFFS

The children's identities legally cannot be revealed. Using pseudonyms, these are the plaintiffs representing the class:

Elisa W. ACS removed Elisa W. from her biological mother when she was four years old and her mother's parental rights have been terminated. She is now 16 years old, and has been in foster care for 12 years. Elisa W. has been shuffled through so many foster placements she is unable to account for all of them. While in foster care, she has been sexually abused, beaten, denied food, and neglected. Elisa W. has been diagnosed with depression, bipolar disorder, and PTSD. She has been hospitalized for mental health reasons and has been on antidepressants and mood stabilizers since she was 11. She would like to go to college and remembers that when she was younger she did well in school, but now has difficulty concentrating. At 16, Elisa W. is old enough to articulate her hopes and feelings but, in her own words, "no one ever asks me what I want." She fears that she will age out of foster care and return to living with her biological mother. Elisa W. remains without a permanent home and family to call her own.

Alexandria R. ACS removed Alexandria R. from her biological mother when she was four years old; reportedly, this is her second time in foster care. She is now 12 years old and has been in foster care for the past eight years. During this time, she has been in approximately nine foster care placements and suffered physical and suspected sexual abuse. Alexandria R. now suffers from PTSD and behavioral problems, including physical aggression toward herself and others. She deeply distrusts anyone she views as "in the system" and does not understand why her current foster parents, who are interested in adopting her, have been unable to do so. Alexandria R. remains without a permanent home and family to call her own.

Thierry E. ACS removed Thierry E. from his biological mother when he was two years old after his mother reported that she was being abused by Thierry E.'s biological father. Thierry E. is now almost four years old and has spent almost half of his young life in foster care. During the past 21 months he has spent in ACS custody, he has been shuffled between two contract agencies and two foster placements. As a result, he suffers from developmental delays and emotional trauma. All indications are that he misses his mother very much; at the end of their twice weekly visits, he cries uncontrollably. Although his mother has completed parenting classes, mental health evaluations and counseling, ACS has made no effort to ensure that this little boy is returned to her. In fact, when Thierry E.'s mother expressed concern about how upset he is when their visits end, she was told to "get used to it" because this was "his life now". Thierry E. remains without a permanent home and family to call his own.

Ayanna J. ACS removed Ayanna J. from her biological mother three days after she was born due to a prior finding of abuse against her mother. Before Ayanna J. was born, her nineteen month old sister was beaten to death by her mother's then-boyfriend. Ayanna J. is now almost three years old and still in ACS custody. Ayanna J. used to cry hysterically during visits with her mother and now says she does not want to visit her mother, often refusing during those visits to leave her babysitter's side. A petition to terminate Ayanna J.'s biological parents' parental rights was filed in April 2014, but Ayanna J.'s court hearing has been repeatedly postponed. Her foster parent is willing to adopt her. Ayanna J. remains without a permanent home and family to call her own.

Olivia R. and Ana-Maria R. ACS removed Olivia and Ana-Maria R. from their biological parents in 2011. They are now five and four years old, respectively, and have spent the past four years in foster care. During their time in foster care, ACS has shuffled them between three homes. In 2013, Olivia R. was sexually abused while Ana-Maria



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R. was present. When Olivia and Ana-Maria R.'s foster care agency was made aware of the abuse, neither the agency nor ACS took any action. As a result of the severe emotional damage they have both suffered while in custody, both girls have been diagnosed with a variety of mental health problems—Olivia R. has serious trust issues and Ana-Maria R. must be medicated for severe hyperactivity and aggressive behavior. Ana-Maria R. spent all of spring 2015 unable to attend her pre-kindergarten program because her caseworker did not obtain the necessary medication for her to attend. Olivia and Ana-Maria R.'s foster mother is willing to adopt them. Olivia and Ana-Maria R. remain without a permanent home and family to call their own.

Xavion M. ACS removed Xavion M. from his biological mother when he was just 15 days old. He is now five years old and has spent his entire young life in foster care. During his time in custody, he has been in two foster homes, including one in which he was severely neglected. Xavion M. has been physically assaulted by his sibling during an unsupervised visit with his mother. As a result of the severe emotional damage he has suffered while in ACS custody, he exhibits behavioral problems and attachment issues, such as refusing to sleep anywhere but in his foster mother's bed. Although Xavion M.'s official permanency goal is "adoption" and his foster mother is willing to adopt him, his caseworker intends to return him to live with his biological mother. Xavion M. is very confused about whether or when he will be moving again to live with his biological mother. Xavion M. remains without a permanent home and family to call his own.

Dameon C. ACS removed Dameon C. from his biological mother when he was just nine days old. He is now four years old and has special needs. During the past four years, Dameon C. has been shuffled among placements and was physically abused by his mother during their first unsupervised overnight visit. As a result of the severe emotional damage he has suffered while in state custody, he has been diagnosed with ADHD and Oppositional Defiant Disorder; he also exhibits persistent head banging behavior. Dameon C.'s foster mother is willing to adopt him, but his Family Court hearings have been repeatedly postponed. Dameon C. remains without a permanent home and family to call his own.

Tyrone M. ACS removed Tyrone M. from his biological mother when he was just 12 days old. He is now seven years old and is still in foster care. Tyrone has been shuffled through three foster care placements. In the foster care placement immediately previous to his current placement, he suffered severe neglect. Tyrone M. arrived at his current foster care placement exhibiting severe dental problems and went to sleep in his clothing every night because he was never taught to undress or change into pajamas. As a result of the severe emotional damage he has suffered while in ACS custody, he suffers from a variety of mental health problems and exhibits behavioral problems so severe that his school has barred him from eating in the lunchroom. Tyrone M. is legally free to be adopted but he remains without a permanent home and family to call his own.

Brittney W. ACS removed Brittney W. from her biological mother when she was two years old. Brittany W. has special needs. She is now seven years old and has been in foster care for over four years. Even though Brittney W.'s lawyer does not think that her biological mother is able to provide appropriate care for her daughter, the foster care agency to which Brittney W. is assigned has taken the position that her biological mother can provide care if she has 24-hour medical support. Meanwhile, her biological mother's doctor does not believe this is necessary. It is unclear what will happen to Brittney or when a decision about her future will be made. Her foster mother is willing to adopt her, but she remains without a permanent home and family to call her own.