EXPEDITE
Hearing set for:
Date:
Time:
Judge/Calendar: : Judge Anne E. Egeler

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

JAMES TA'AFULISIA, JEROME TA'AFULISIA, DIANTE PELLUM, on behalf of themselves and all others similarly situated,

Petitioners,

vs.

WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES; and ROSS HUNTER, in his official capacity as Secretary of the Department of Children, Youth, and Families,

Respondent.

CLASS ACTION

No. 22-2-02974-34

MOTION FOR PRELIMINARY INJUNCTION

I. Introduction

On Friday, July 12, 2024, the Washington State Department of Children Youth and Families (DCYF) transferred 43 class members from Green Hill School (GHS) to the Department

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

of Corrections (DOC) custody without notice or a transfer hearing. These transfers violate not only this Court's Order approving the terms of the settlement agreement in this case, but also DCYF's own rules and policies, Washington State statutes, as well as both the state and federal constitutions' guarantee of due process. DCYF's justification for these transfers, provided in its Notice of Transfer of Green Hill School Residents, filed with this Court on July 12, 2024, is devoid of merit. The Court should order DCYF to return these class members to its custody immediately and preliminarily enjoin, pending a permanent injunction hearing, any future transfers to DOC custody unless those transfers comply with state law and the Settlement Agreement entered in this case on October 27, 2023.

II. Statement of Issues

Should the Court enter an order that:

1. Requires DCYF and DOC to return the transferred class members to Green Hill School immediately;

2. Enjoins DCYF from transferring class members to DOC custody without fully complying with state law and the Settlement Agreement; and

4. Awards Columbia Legal Services reasonable attorneys' fees as provided for in Section II.D.2 of the Settlement Agreement?

III. Statement of Facts

There is no dispute that DCYF transferred 43 class members from GHS to DOC custody on July 12, 2024 without advance notice, access to counsel, or a transfer hearing. The agency made no assertion that any of the transferred class members presented "a continuing and serious threat to the safety of others" as required by RCW 13.40.280(2). Indeed, DCYF transferred one class member, Emiliano Charre-Nunez, even after

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

DCYF's request to transfer Mr. Charre-Nunez was denied at a Residential Review Board hearing held by DCYF on June 21, 2024. Declaration of Sarah Nagy at 5. Furthermore, DCYF also transferred class representative Diante Pellum back to DOC custody. Declaration of Diante Pellum. Mr. Pellum was first illegally transferred to DOC in January 2020. Third Amd. Petition at 4. After this case was settled, DCYF agreed to have Mr. Pellum returned to GHS without a Residential Review Board hearing on December 21, 2023. Nagy Decl. at 3; *see also* Pellum Decl. at 2. Mr. Pellum has now been illegally transferred to DOC custody twice.

IV. Argument

> The applicable requirements for issuance of a preliminary injunction are well settled:
>
> "[O]ne who seeks relief by temporary or permanent injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him."
>
> ....
> [S]ince injunctions are addressed to the equitable powers of the court, the listed criteria must be examined in light of equity including balancing the relative interests of the parties and, if appropriate, the interests of the public. *Tyler Pipe Indus., Inc. v. Department of Revenue,* 96 Wash.2d 785, 792, 638 P.2d 1213 (1982) (quoting *Port of Seattle v. International Longshoremen's & Warehousemen's Union,* 52 Wash.2d 317, 319, 324 P.2d 1099 (1958)); *see also* RCW 7.40.020 (grounds for issuance of preliminary injunction).

Kucera v. State Dept. of Transportation, 140 Wn.2d 200, 209-210, 995 P.2d 63 (2000).

These criteria are satisfied here. The equities overwhelmingly favor the transferred class members who have a clear right to remain in DCYF custody. They have suffered an immediate invasion of that right. DCYF's actions have resulted in actual and substantial injury to them. An injunction will prevent future violations and restore the status quo that existed before DCYF

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

committed its unlawful act. The public interest favors the injunction. There is a powerful public interest in remedying egregious violations of state law by the Executive Branch. The class members are likely to prevail on the merits.

As will be discussed below, class members satisfy the requirements for injunctive relief. In addition, the Settlement Agreement itself provides for its enforcement in II.D.2:

> In the event that class counsel have a good faith reason to believe that there is a risk of imminent or ongoing harm to a settlement class member as a result of Respondents failure to comply with this Settlement Agreement, class counsel may file a motion for temporary relief to prevent or reverse the imminent or ongoing harm. Class counsel will provide the appropriate notice to Respondents counsel required under state law. If class counsel file a motion for temporary relief, Respondents agree to pay reasonable attorneys fees and costs if the settlement class is the prevailing party.

a. Class members have a clear right to return to DCYF custody.

The Court should reject DCYF's contention that it can transfer class members to DOC for reasons other than when individual class member presents a continuing and serious threat to the safety of others. The law is clear; DCYF may only transfer a class member if it conducts a review board hearing *before* the transfer; other transfers are not authorized. DCYF is justifying its improper conduct with erroneous interpretations of statutes that actually protect the rights of the youth in its custody.

> When interpreting a statute, our primary objective is to "ascertain and give effect to the legislature's intent as manifested by the statute's language." *Woods v. Seattle's Union Gospel Mission*, 197 Wash.2d 231, 238, 481 P.3d 1060 (2021), *cert. denied*, —— U.S. ——, 142 S. Ct. 1094, 212 L.Ed.2d 318 (2022). To determine the meaning of a statute's language, "we look to the text, the context of the statute, related statutory provisions, and the statutory scheme as a whole." *State v. Valdiglesias LaValle*, 2 Wash.3d ——, 535 P.3d 856, 861 (2023) (citing *State v. Haggard*, 195 Wash.2d 544, 548, 461 P.3d 1159 (2020)). If the statute is susceptible to more than one reasonable interpretation, then it is ambiguous and we may resort to statutory construction, legislative history, and relevant case law to discern legislative intent. *Valdiglesias LaValle*, 535 P.3d at 861.

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

Nwauzor v. The Geo Group, Inc., 2 Wn.3d 505, 512, 540 P.3d 93 (2023).

There are two statutes at play in transfers of class members to DOC: RCW 72.01.410 and RCW 13.40.280. The first, RCW 72.01.410, also known as the "JR-to-25 law" creates a statutory right for individuals who were charged and sentenced in adult court for crimes committed when they were under age 18 to be committed to the custody of DCYF until the age of 25. RCW 72.01.410(1)(a) expressly states that these adult-sentenced youth in the custody of DCYF must be treated the same as any other youth in DCYF's custody.[1] This means that the transfer protections afforded to juvenile-court adjudicated youth under RCW 13.40.280 *must* apply to all youth in DCYF's custody.

The second statute at play, RCW 13.40.280, provides that class members who have been placed in DCYF custody may <u>*only*</u> be transferred to DOC custody after a hearing conducted pursuant to DCYF rules.

> The secretary of the department of children, youth, and families may, with the consent of the secretary of the department of corrections, transfer a juvenile offender to the department of corrections if it is established at a hearing before a review board that continued placement of the juvenile offender in an institution

[1] RCW 72.01.410(1)(a) provides:

> (1) Whenever any person is convicted as an adult in the courts of this state of a felony offense committed under the age of eighteen, and is committed for a term of confinement, that person shall be initially placed in a facility operated by the department of children, youth, and families. The department of corrections shall determine the person's earned release date.
>
> (a) While in the custody of the department of children, youth, and families, the person must have the same treatment, housing options, transfer, and access to program resources as any other person committed to that juvenile correctional facility or institution pursuant to chapter **13.40** RCW. Except as provided under (d) of this subsection, treatment, placement, and program decisions shall be at the sole discretion of the department of children, youth, and families. The person shall not be transferred to the custody of the department of corrections without the approval of the department of children, youth, and families until the person reaches the age of twenty-five.

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

> for juvenile offenders presents a continuing and serious threat to the safety of others in the institution. The department of children, youth, and families shall establish rules for the conduct of the hearing, including provision of counsel for the juvenile offender.[2]

DCYF amended those rules last year to make clear that they applied to class members being considered for transfer to DOC. [3] They provide:

> (1) Individuals in the custody of the department being considered for transfer to DOC must be notified in writing at least seven calendar days in advance of the review board hearing convened to consider the matter.
>
> (2) The written notification must include the reasons the transfer is being considered and a copy of the rules pertaining to the review board hearing.
>
> (3) Prior to any review board hearing, individuals being considered for transfer to DOC, or their attorney, will have the right to access and examine any department files or records pertaining to the proposed transfer of the individual to the DOC.

WAC 110-745-0020.

DCYF's interpretation of RCW 72.01.410(1)(c) as being somehow independent from the protections under 72.01.410(1)(a) (and by reference, RCW 13.40.280) is meritless. RCW 72.01.410(1)(c) simply makes clear that DCYF cannot transfer an individual person to DOC custody unless the person presents a significant safety risk.[4] There is nothing in the statutory language that separates or distinguishes subsections .410(1)(a) from .410(1)(c). RCW 72.01.410(1)(c) does not permit the transfer to DOC of a class member who presents no

---

[2] RCW 13.40.280(3) and (4) discuss transfer hearings if DCYF staff are assaulted and are not relevant here.

[3] "The rules of statutory interpretation equally apply to interpretation of agency rules and regulations." *Alstom Power, Inc. v. Dep't of Revenue,* 26 Wash. App. 2d 36, 45, 526 P.3d 855, 861 (2023) ***citing*** *Dep't of Licensing v. Cannon*, 147 Wash.2d 41, 56, 50 P.3d 627 (2002).

[4] "If the department of children, youth, and families determines that retaining custody of the person in a facility of the department of children, youth, and families presents a significant safety risk, the department of children, youth, and families may transfer the person to the custody of the department of corrections." RCW 72.01.410(1)(c).

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

significant safety risk or, synonymously, does not present "a continuing and serious threat to the safety of others in the institution." RCW 13.40.280(2).

DCYF's tortured reading of RCW 72.01.410(1)(c) is at odds with .410(1)(a) as well as the stated legislative purpose of the JR-to-25 law.

> The legislature recognizes state and national efforts to reform policies that incarcerate youth and young adults in the adult criminal justice system. The legislature acknowledges that transferring youth and young adults to the adult criminal justice system is not effective in reducing future criminal behavior. Youth and young adults incarcerated in the adult criminal justice system are more likely to recidivate than their counterparts housed in juvenile facilities.
>
> The legislature intends to enhance community safety by emphasizing rehabilitation of juveniles convicted even of the most serious violent offenses under the adult criminal justice system. Juveniles adjudicated as adults should be served and housed within the facilities of the juvenile rehabilitation administration up until age twenty-five, but released earlier if their sentence ends prior to that. In doing so, the legislature takes advantage of recent changes made by congress during the reauthorization of the juvenile justice and delinquency prevention act by the juvenile justice reform act of 2018 that allow youth and young adults who at the time of their offense are younger than the maximum age of confinement in a juvenile correctional facility, to be placed in a juvenile correctional facility by operation of state law. The emphasis on rehabilitation up to age twenty-five reflects similar programming in other states, which has significantly reduced recidivism of juveniles confined in adult correctional facilities."

Findings—Intent—2019 c 322.

DCYF's interpretation of RCW 72.01.410(1)(c) would allow transfers of class members without the statutory protections of RCW 13.40.280(2) whenever DCYF decides there is a significant safety risk at one of its facilities. DCYF, alone, determines whether there is a safety risk. This loophole is big enough to drive a proverbial truck through.

> Where statutory language is plain and unambiguous, a court will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of a contrary interpretation by an administrative agency. *See Bravo v. Dolsen Cos.,* 125 Wash.2d 745, 752, 888 P.2d 147 (1995); *Smith v. N. Pac. Ry. Co.,* 7 Wash.2d 652, 664, 110 P.2d 851 (1941). A statutory term that is left

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

> undefined should be given its "usual and ordinary meaning and courts may not read into a statute a meaning that is not there." *State v. Hahn,* 83 Wash.App. 825, 832, 924 P.2d 392 (1996). If the undefined statutory term is not technical, the court may refer to the dictionary to establish the meaning of the word. *Heinsma v. City of Vancouver,* 144 Wash.2d 556, 564, 29 P.3d 709 (2001). In undertaking this plain language analysis, the court must remain careful to avoid "unlikely, absurd or strained" results. *State v. Stannard,* 109 Wash.2d 29, 36, 742 P.2d 1244 (1987).

Burton v. Lehman, 153 Wn. 2d 416, 422–23, 103 P.3d 1230 (2005).

DCYF's interpretation of RCW 72.01.410(1)(c) would result in an "absurd or strained" result. RCW 72.01.410(1)(c) is not ambiguous because it is not "susceptible to two or more reasonable interpretations" *Id.* at 423 (statute is ambiguous only if susceptible to two or more reasonable interpretations, but statute is not ambiguous merely because different interpretations are conceivable). Even where there is more than one reasonable interpretation, courts must "construe the statute to effectuate the legislature's intent." *Id.* The entirety of the Legislature's intent as to the JR-to-25 law is cited above. There is not so much as a hint that the Legislature intended RCW 72.0.410(1)(c) to give DCYF authority, under any circumstance, to transfer class members to DOC without affording them RCW 13.40.280 protections.

DCYF's interpretation of RCW 72.01.410(3) is equally tortured and would yield the same absurd result as the agency's reading of RCW 72.01.410(1)(c). Subsection .410(3) requires DCYF to evaluate the programmatic needs of youth over age 21 in its custody to determine whether alternative placement may be appropriate. But once again, DCYF is erroneously attempting to distinguish transfers considered under this subsection from the due process protections guaranteed by RCW 72.01.410(1)(a) and RCW 13.40.280 – there is nothing in the language of the statute that separates subsection .410(3) from those clear, mandatory protections.

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

Furthermore, this faulty interpretation is also in direct contradiction to the agency's own understanding of the statute. In communication with DCYF's lawyers about proposed changes to DCYF Policy 5.51 in February 2024, class counsel received ***specific assurances*** from Assistant Attorney General Mandy Rose that any transfers contemplated under subsection .410(3) would be protected by the same review board hearings process established as a result of the settlement agreement. Nagy Decl. at 3-4; *see also* DCYF Policy 5.51 attached to Nagy Decl. at Ex. D. DCYF's assertions now that these transfers are somehow exempt from those protections are the opposite of what it said earlier this year.

A party has a clear legal or equitable right to preliminary relief where the party demonstrates a likelihood of prevailing on the merits. *See Tyler Pipe Industries, Inc. v. Department of Revenue*, 96 Wn.2d 785, 793, 638 P.2d 1213 (1982). Class members have satisfied this requirement.

b. Class members have a well-grounded fear.

DCYF has already invaded transferred class members' rights and that invasion is ongoing.[5] In *State v. Kelley*, 77 Wn.App.66, 73, 889 P.2d 940 (1995), the Washington Court of Appeals rejected DOC's statutory interpretation argument and affirmed the superior court's rejection of DOC's attempt to perform DNA analysis on an inmate's blood.[6] The court found that adopting DOC's statutory interpretation would have allowed DOC "to take the blood of a

[5] As alleged in their 3rd Amended Petition at 12-13, class members also have a state constitutional right to due process prior to any transfer to DOC. DCYF has invaded not only class members' statutory rights, but their constitutional right as well.

[6] Ms. Kelley's blood had already been taken after DOC threatened her with discipline if she did not allow it. *Id* at 68. The question before the court was whether DOC would be permitted to analyze her blood that, it turns out, was improperly collected due to DOC's incorrect statutory interpretation.

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

nonviolent, non-sex offender for purposes of DNA testing and identification, a power neither expressly granted nor apparently contemplated by the Legislature." *Id.* at 71-2. DOC was not allowed to further invade Ms. Kelley's bodily autonomy or violate her statutory right without the authority (or contemplated authority) to do so. Here, the Legislature neither expressly granted, nor apparently contemplated, authorizing DCYF to transfer class members to DOC for the reasons provided by the agency. In doing so, DCYF has violated the statutory rights of each of the 43 transferred class members.

c. Class members have already suffered substantial injury.

For the 43 class members transferred to DOC on July12, 2024 the actual and substantial injury has already occurred and is ongoing. Pellum Decl. These class members have already been torn away from GHS, forced to leave without warning or the ability to prepare, shackled and shipped off to adult prison without any due process protections. *Id*. Each one of these class members has been substantially injured by being deprived of their right to be placed in a developmentally appropriate, rehabilitative setting. For any class member who is nearing their 25th birthday, this deprivation may prove to be irreversible without swift action by the Court.

The Washington State Supreme Court held that a certified class of inmates who had participated in DOC's Sex Offender Treatment Program in prison would suffer (or had already suffered) substantial injury regarding the release of their confidential treatment files to officials with the power to decide whether to file for their civil commitment as sexually violent predators. The court upheld the trial court's grant of injunctive relief, finding that disclosure was improper and harmful. *King v. Riveland,* 125 Wn. 2d 500, 517–18, 886 P.2d 160 (1994).

A public housing tenant was able to show substantial injury justifying the issuance of a preliminary injunction against her eviction in *Speelman v. Bellingham/Whatcom Cnty. Hous.*

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

Authorities, 167 Wn. App. 624, 635, 273 P.3d 1035 (2012). In *Speelman*, the Housing Authorities violated Ms. Speelman's procedural due process rights. "Therefore, Speelman is likely to prevail on the merits of her claim. Speelman satisfies the first preliminary injunction factor." *Id.* The court of appeals went on to find that Ms. Speelman was entitled to a preliminary injunction because she satisfied all the requirements for its issuance, including substantial injury (possible eviction) and public interest (public has an interest in insuring lawful operation of public housing programs). *Id.* at 635-6.

Class members have been substantially injured by being deprived of their right to reside in a rehabilitative setting until the age of 25, and by being deprived of their statutory and constitutional due process protections. Class members have satisfied the substantial injury requirement necessary for injunctive relief

d. The equities are with the transferred class members.

Superior courts are not always required to balance the equities when considering injunctive relief. In a case where a developer took its chances and poured a foundation on a Kent lot where it knew the validity of a land use ordinance and its building permit were "hotly contested," the Washington Supreme Court affirmed the trial court's holding that the "balancing of the equities doctrine is reserved for the innocent developer who proceeds without any knowledge of problems associated with the construction." *Responsible Urban Growth Group v. City of Kent*, 123 Wn.2d 376, 389, 868P.2d 861 (1995).

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

Here, the balance of equities tip entirely in favor of the injured class. DCYF proceeded with these transfers knowing its actions would be "hotly contested."[7] DCYF is acting in direct disregard of the Settlement Agreement, the law, and the assurances of its own counsel. Nagy Decl. at 4.

> From ancient times, " [t]he first maxim in equity" has been that one 'who seeks equity must do equity.' " *People's Sav. Bank v. Bufford,* 90 Wash. 204, 208, 155 P. 1068 (1916) (emphasis omitted). Of similarly ancient provenance is the requirement that those " 'who come[ ] into equity must come with clean hands.' " *Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc.,* 96 Wash.2d 939, 949, 640 P.2d 1051 (1982).

Columbia Cmty. Bank v. Newman Park, LLC, 177 Wash. 2d 566, 581, 304 P.3d 472, 479 (2013).

DCYF has no right to seek equity because it has not done equity – it does not come before the Court with clean hands. All class members, not just the transferees, have a right to remain in DCYF custody until their 25th birthdays unless they are transferred pursuant to RCW 13.40.280. Because DCYF's actions were unlawful, the balance of equities is entirely in favor of the transferees.

e. If the Court considers the public interest, that interest favors the transferees.

The public interest is considered by the courts only "if appropriate." The public has no interest in furthering, defending, or endorsing the Executive Branch's violation of valid statutes enacted by the Legislative Branch or the Executive Branch's violation of a settlement agreement approved by the Judicial Branch when that agreement's purpose is to guarantee the government's proper execution of the laws of the State of Washington.

[7] See Respondents' Notice of Transfer of Green Hill School Residents at 3, where DCYF made clear that it anticipated that its actions would elicit a swift response from class counsel.

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

Should the Court consider the public interest, that interest does not outweigh the transferees' right to remain at DCYF until their 25th birthdays or lawful transfer pursuant to RCW 13.40.280(2). *See also Speelman*, 167 Wn.App at 636 (public has an interest in ensuring that subsidized housing programs administered lawfully). The class members who were unlawfully transferred are not responsible for capacity issues at DCYF facilities.[8] They are entitled to be there and must be returned.

f. No bond or other security should be required.

Rule 65(c) states that no preliminary injunction shall issue "except upon the giving of security by the applicant, in such sum as the court deems proper." Although there are no reported decisions from Washington State, numerous courts construing the identical federal rule have held that despite the literal language of the rule a preliminary injunction may be granted without

---

[8] Capacity issues at GHS did not develop overnight—a fact acknowledged in the agency's press release closing intake at GHS and Echo Glen earlier this month.

> Over the last year, Green Hill experienced an influx of young people entering JR that outnumbered releases each week, which along with longer sentences, is causing a rise in population. The population at Green Hill went from 150 in January 2023 to 240 in June 2024, which is 30% above capacity.

See News Release, Department of Children, Youth, and Families, DCYF Suspends Entries at Green Hill, Echo Glen (July 6, 2024), https://content.govdelivery.com/bulletins/gd/WADEL-3a70eb3?wgt_ref=WADEL_WIDGET_277; *See also* Declaration of Sara A. Zier.

DCYF had ample time to ask the Court if it agreed with the agency's interpretation of the statute or invoke the Settlement Agreement's dispute resolution provision found at II.D.1.

> The parties agree that any dispute related to this settlement agreement or its contents shall be resolved as follows:
>
> In the event of any dispute, the parties agree to negotiate in good faith for at least 30 days. If they are unable to reach a resolution within 30 days, either party may request the involvement of a mediator to resolve the dispute. Mediation is not mandatory under this agreement. If the parties agree, they may proceed to mediation. The costs of mediation shall be split 50-50 between the parties.

DCYF made a deliberate decision not to invoke this provision. Class counsel did not learn about the transfers until they were already underway. Nagy Decl. at 5.

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

security when a lawsuit is brought on behalf of low-income persons. *E.g.*, *Miller v. Carlson*, 768 F. Supp. 1331, 1340-41 (N.D. Cal. 1991) (Preliminary injunction entered without bond enjoining the California Department of Social Services from failing to provide continued childcare assistance to AFDC recipients). *Bass v. Richardson*, 338 F. Supp. 478, 489-491 (D.C. N.Y. 1971) (Preliminary injunction entered without bond in class action restraining cutbacks in benefits under New York's Medicaid Program). In these cases, the courts have waived security on the grounds that to impose such a requirement would effectively deny access to judicial review for indigent people.

The class is indigent and likely to succeed on the merits. In the alternative, the Court should set a nominal bond requirement. The amount of an injunction bond is within the trial court's discretion. *Fisher v. Parkview Properties, Inc*., 71 Wn. App. 468, 479, 859 P.2d 77 (1993). In setting an appropriate bond requirement, the Court should keep in mind that an opposing party may only recover against the bond where it has been wrongfully issued. A temporary restraining order or injunction is issued wrongfully when it "would not have been ordered had the court been presented all of the facts." *Id.* at 475. Here, there is little danger of any wrongful issuance. The facts in this case are not in dispute and have been fully presented to the Court.[9]

[9] The Court should also keep in mind the fact that in Washington, the amount of any recovery for wrongful issuance is limited to the amount of the bond. The underlying public policy behind this rule "is to encourage ready access to courts for good faith claims." *Id*. at 478. If the Court sets anything but a nominal bond requirement, this public policy will be thwarted.

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

Most importantly, the Settlement Agreement provides for its enforcement without any conditions. DCYF agreed to these terms that do not require the class to post a bond in order to obtain temporary relief.

I. CONCLUSION

Petitioners satisfy each of the elements necessary for a injunctive relief, and respectfully ask this Court to grant their motion for a preliminary injunction. Specifically, Petitioners ask this Court to order (1) that all 43 of the class members impacted by DCYF's transfer decision on July 12, 2024 be immediately returned to Green Hill School, (2) that DCYF be prohibited from transferring any additional class members or prospective class members to DOC custody without following the due process protections guaranteed to them by the Settlement Agreement, as well as by statutory and constitutional law, and (3) award reasonable attorneys' fees pursuant to Section II.D.2 of the Settlement Agreement.

DATED this 15th day of July 2024.

COLUMBIA LEGAL SERVICES

s/ Amy Crewdson
Amy Crewdson, WSBA #9468
amy.crewdson@columbialegal.org
Laurel Jones, WSBA #47904
laurel.jones@columbialegal.org
Sarah Nagy, WSBA #52806
sarah.nagy@columbialegal.org

1301 Fifth Avenue, Suite 1200
Seattle, WA 98101
(206) 464-0838

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)

LAW OFFICES OF DANIEL NORMAN

Daniel Norman, WSBA #28786
dannormanlaw@gmail.com
512 6th St S Ste 101
Kirkland, WA 98033
(206) 734-7969

Class Counsel

Columbia Legal Services
1301 Fifth Avenue, Ste 1200
Seattle, WA 98101
(206) 464-0838; (206) 382-3386 (fax)