

Kevin S., et al. v. Blalock, et al.
No. 1:18-cv-00896
U.S. District Court (D. New Mexico)

**CORRECTIVE ACTION PLAN
FOR PARTIAL RESOLUTION OF ISSUES IN DISPUTE**

By and Between
Kevin S., et al., Plaintiffs, and the New Mexico Children, Youth and Families Department
(CYFD) and New Mexico Human Services Department (HSD), Defendants

June 30, 2023

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I. INTRODUCTION

In the spirit of collaboration, counsel for Plaintiffs, CYFD and HSD (individually as “Party” and collectively as the “Parties”), employed good-faith, best efforts to discuss and resolve disputes in furtherance of Step 1 of the Dispute Resolution process set forth in Section IX.A of the March 2020 Final Settlement Agreement (“Agreement”). The purpose of this Corrective Action Plan (“CAP”) is to partially resolve the areas of dispute as set forth in Plaintiffs’ initiation of the dispute resolution process dated January 6, 2023 and attached as Exhibit A. This Corrective Action Plan sets forth the commitments that CYFD and HSD agree to undertake to come into compliance with the Agreement between the Parties and to ensure that children currently in state custody are able to benefit from the State’s commitments as outlined in the Agreement.

Mediation conducted by the Co-Neutrals was held on March 28-29, 2023, April 14, 2023, and May 5, 2023. In addition, the Parties participated in a facilitated listening session with Nations, Pueblos and Tribes located in New Mexico on May 10, 2023 and attended a mediation conducted by the Co-Neutrals on May 12, 2023. The Parties held additional mediation sessions on May 24, 2023 and June 9, 2023.

As used in this CAP, the term “State” refers to CYFD and HSD.

Nothing in this CAP shall be construed to modify the obligations in the Agreement, including but not limited to timelines for monitoring and reporting and meeting the Performance Standard as set forth in the Agreement. The CAP identifies and describes the strategies that the Parties agree are necessary to implement the Agreement. As determined appropriate by the Co-Neutrals, the CAP commitments may be referenced in the Co-Neutrals’ Annual Report. The Parties have jointly agreed that the commitments outlined in the CAP are necessary and will be undertaken in the time set forth in the CAP to improve the State’s ability to comply with its commitments. The Parties agree that this CAP shall expire on January 5, 2024.

This CAP resolves only the identified issues in dispute specifically resolved in the CAP up to the date of execution of this CAP. Plaintiffs will not arbitrate the remaining issues in the 2021 report until the CAP expires. For any commitment set forth in the CAP that the State fails to meet, the Parties agree that Plaintiffs may proceed to arbitration without initiating Step 1 of the Dispute Resolution process set forth in the Agreement.

For all remaining issues that have not be resolved in the CAP, the Parties agree that Plaintiffs have exhausted their obligations under Step 1 of the Dispute Resolution process set forth in the Agreement and may proceed to arbitration. Nothing in this CAP shall be construed as a waiver of Plaintiffs' right to arbitrate any and all remaining unresolved issues and to secure any and all relief and remedies provided by the Agreement.

For each commitment, the CAP identifies the issue(s) in dispute that is resolved by agreement between the Parties.

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1. CYFD Workforce Caseload

The Parties agree that the following commitments will be implemented to improve compliance with Appendix B, Target Outcome 10. While the State's performance with respect to this target is no longer in dispute, this target will still be reported and monitored as required under the original terms of the Agreement and CYFD is obligated to meet the agreed upon Performance Standard as to this target as set forth in the Agreement. The commitments below are to be implemented in addition to the activities set forth in the Agreement Appendix B, Target Outcome 10.

The Parties agree that there is an urgent need to recruit and retain case workers and to come into compliance with the caseload standard required by the Agreement. CYFD will work closely and cooperatively with the Co-Neutrals to ensure progress towards meeting caseload standards and will take the actions described below.

- a. By December 31, 2023, no Investigation Case, Permanency Planning, In-Home Services, or Placement worker will have over 200% of the applicable caseload standards documented in the 2023 Data Validation Plan approved by the Co-Neutrals , including trainees with graduated caseloads.
- b. By December 31, 2023, no supervisor will be carrying any cases.
- c. Monthly data reports with data elements agreed to by the Co-Neutrals will be made available to Co-Neutrals, which the Co-Neutrals may validate.

CYFD is exploring reporting this data in a monthly dashboard format. Until a dashboard is created, the data will be reported in a format matching or similar to existing reports which are currently being submitted to the Co-Neutrals and Plaintiffs pursuant to the MOU.

2. Building out family-based placements

The Parties agree that the following commitments will be implemented to improve compliance with Appendix B, Target Outcome 6. While the State's performance with respect to this target is no longer in dispute, this target will still be reported and monitored as required under the original terms of the Agreement, and CYFD and HSD are obligated to meet the agreed upon Performance Standard as to this target as set forth in the Agreement. The commitments below are to be implemented in addition to the activities set forth in Appendix B, Target Outcome 6 of the Agreement.

CYFD will commit to public/private strategy to recruit and retain resource families.

In five high-needs counties (Bernalillo, Dona Ana, Santa Fe, San Juan, and Chavez/Eddy), CYFD will immediately assign one placement staff to focus exclusively on recruitment until at least September 30, 2023. The State will maintain its dedicated public staff in the 5 designated counties at least until the private contractor has fully ramped up its capacity in those 5 designated counties.

In addition to the assignment of placement staff to focus on the five counties listed above, CYFD will enter into contracts with at least one private provider for resource family recruitment by September 30, 2023 to focus on foster home recruitment and retention with specific capacity focused on growing new foster homes in each county throughout the State. The contract will provide that the private entities will recruit families and support them through the licensing process.

CYFD will retain exclusive responsibility for assessment, licensure and supervision of all foster homes, regardless of whether the home is recruited publicly or privately. CYFD regional placement staff will be responsible for supervising private entities.

By June 30, 2023, the State will have county-specific recruitment plans for each county in the State that address the needs, strategies, and targets for resource homes. Said recruitment plans will include demographics of the children and youth in state custody (Children in State Custody, hereafter "CISC"), including: (1) the foster youths' age, race and ethnicity; (2) the resource families' age, race, ethnicity, and geographic information; (3) the bed capacity of current resource families; and (4) the numbers of families based on type of placement (non-kin; kin; and respite). By August 1, 2023, CYFD will develop additional capacity to assess the different levels of foster care payment based on child needs by county to assist with county-specific foster care recruitment planning. These plans will be provided to the Co-Neutrals by June 30, 2023, and the State will meet with the Co-Neutrals to discuss any feedback.

CYFD will maintain on its webpage data on monthly gain/loss of resource homes. CYFD's web link will be made publicly available.

CYFD will provide Co-Neutrals with quarterly statewide data on gain/loss of non-relative licensed resource homes. Details of these data, including quarterly date ranges and submission deadlines, will be agreed upon by the Co-Neutrals and the State.

CYFD will collect and assess the data by county and will provide data by county to the Co-Neutrals as set forth below in Section 5.

The Parties agree that care coordinators from managed care organizations (MCOs) need to take a greater role in coordinating Treatment Foster Care (TFC) placements for children in state custody that are enrolled in an MCO. When a child is recommended for TFC, including but not limited to a recommendation from a mental health provider or a request from IPP team, CYFD will submit the information to the MCO to confirm medical necessity by a prior authorization.

Once the TFC recommendation has been referred to the MCO by CYFD and prior authorization and medical necessity has been confirmed, the care coordinator assigned to the child will have the responsibility of coordinating and obtaining TFC services. The MCO care coordinator will document such activity appropriately in the child's file kept by the MCO pursuant to the obligations as outlined in Section 4.4 of the Medicaid Managed Care Organization Service Agreement. *See also* LOD 69-1, describing new obligations under section 4.12.15.

For children who are Fee for Service (FFS), CYFD will submit the referral packet to the Third Party Assessor (TPA). CYFD and HSD will then work with the IPP Team to find a TFC placement.

If the TFC recommendation is reduced, denied, modified, delayed or not approved by the MCO or TPA, Notice of Action and grievance protocols will be provided to the child's caregiver, legal representative, and legal custodian. Any Notice of Action received by CYFD will be provided to the child's Nation, Pueblo or Tribe if applicable. Any denial, reduction, modification, delay of a recommendation for treatment foster care, including for prior authorization requests, will be reviewed by the Medical Director at the MCO or TPA, and a copy of the Medical Director's decision to be sent to the Cabinet Secretary of HSD and the Cabinet Secretary of CYFD. If TFC services are not authorized by the MCO, HSD and/or CYFD, including through state general funds or single case agreements, the State will immediately (within 5 days) identify alternative services. To address the needs of the child in state custody during the period of appeal, the child will be placed in the most appropriate and least restrictive placement as identified by the IPP Team, and the team may consider single case agreements as needed for community-based placement.

The Parties agree that the determination (approval/denial/modification/reduction/delay) will be tracked by CYFD and HSD and that the time (number of days) between approval and treatment foster care services beginning will be tracked. Details of these data will be tracked as follows:

Aggregate and child-specific level data for the following on a quarterly basis (data will include the case and person ID, date of birth, date of request/activity or disposition decision and notice provided) will be provided to the Co-Neutrals:

1. Referrals/requests for prior authorization of TFC by CYFD to MCO
2. Disposition of TFC requests for prior authorization by MCO (to include approvals, modifications, denials)
3. For all approvals or modifications, dates and identification of provider for the following:

- a. Referral made by MCO to TFC agency (for each TFC provider the referral was submitted and corresponding dates for each referral)
 - b. Decision provided by TFC agency to MCO (for each TFC provider providing the decision and corresponding dates for each decision)
 - c. For any acceptances from TFC agency, date the acceptance was received, and date that service began
 - d. For any modifications or denials from TFC agency, reason for denial and any requests for supportive services that would allow for acceptance
4. Requests for re-authorization of TFC to MCO
 5. Disposition of TFC reauthorization requests by MCO (to include approvals, modifications, denials)
 6. For all children referred by CYFD to MCO for TFC, aggregate data on the number of days between the request by CYFD for TFC prior authorization, approval by MCO, and TFC being provided to the child.

For FFS, CYFD and HSD will track the activities above.

3. Bringing children placed out of state back to New Mexico

The Parties agree that the following commitments will be implemented to improve compliance with Appendix B, Target Outcome 2. While the State's performance with this target is no longer in dispute, this target will still be reported and monitored as required under the original terms of the Agreement and CYFD and HSD are obligated to meet the agreed upon Performance Standard as to this target as set forth in the Agreement. The commitments below are to be implemented in addition to the activities set forth in the Agreement for Appendix B, Target Outcome 2.

The Parties agree that immediate efforts must be made to end all out-of-state placements unless in extraordinary circumstances necessary to protect the safety and security of the child as documented in the child's record and as approved by the Secretary of CYFD and the Secretary of HSD and to continued efforts to bring children who are currently placed in out-of-state congregate care back to New Mexico with appropriate services. The State will immediately launch a six-month specialized review team ("Team"), with authority to authorize single case agreements if necessary to provide services and supports to children with complex needs in New Mexico. Notwithstanding the January 5, 2024 expiration date of this CAP, the State agrees to continue the specialized review team for six months from the date of this CAP.

The following participants will be members of the Team: Dr. George Davis, CYFD's Optimal Placement Coordinator who will have authority to authorize single case agreements, the CYFD Community Behavioral Health Clinician (CBHC), and the MCO Medical/BH Director for each relevant child. The Team has authority to bring in other people with relevant knowledge about the child; the child's disability; and the services and supports that will enable the child to be returned to New Mexico [*i.e.*: DD Waiver professionals, Guardian Ad Litem/Youth Attorney, long term

providers, representatives from the child's Nation, Pueblo or Tribe]. Any engagement with those outside of State Agencies would require confidentiality agreements and specific parameters to guard the protected health information and other specific case details, as applicable, to be reviewed and approved by State authorities.

The Team will meet as frequently as needed to develop a plan to bring nine currently identified children back to New Mexico and into a safe, least restrictive and appropriate setting. These nine children have been identified because they do not have a current discharge plan. If the discharge plans for any of the other children in state custody who are currently out of state but not part of the identified nine children cannot be implemented, these children will also be reviewed by the Team. For all children currently out of state, when the children return to New Mexico, their placement and services will be monitored by the Team every 30, 60, and 90 days pursuant to CYFD's current IPP process.

At the end of the six-month pilot, the Team will analyze the effectiveness of its actions towards bringing children back to New Mexico successfully under single case agreements and identify practices and services that will be useful for avoiding out-of-state placements for CISC in the future. The findings of the Team will be shared with the Co-Neutrals and the Plaintiffs.

The State has agreed to pay Dr. George Davis at the rate of \$200 an hour, with the express understanding that this rate is only for the purposes of participating in the pilot team. As a Team participant, Dr. Davis will be provided with confidential information solely for the purposes of identifying the treatment and service needs of the children being reviewed by the Team. Personal identifying information regarding specific children will not be shared with the Plaintiffs' counsel by Dr. Davis. However, Plaintiffs' counsel retain all the rights to access confidential information as set forth in the Agreement and the Protective Order filed in this matter.

In addition to the Team – and in order to stop sending children in state custody out of state in violation of the Agreement – both the CYFD Secretary and the HSD Secretary must approve any out-of-state placement before placement is made.

In addition, in order to serve more CISC in home-based settings, HSD agrees to double the Capacity of High-Fidelity Wraparound (HFW) Services in Medicaid by January 1, 2024.

HSD and CYFD will work together to meet the goal of doubling the capacity of the newly-approved HFW benefit in Medicaid by the end of 2023 by committing to the following:

- HSD and CYFD will double the number of HFW sites from 10 to 20.
- HSD and CYFD will double the number of HFW facilitators from 26 to 52. It takes six months to train HFW facilitators. HSD and CYFD will have 26 additional facilitators in the training pipeline by January 1, with credentialing expected in the first quarter of 2024.

On October 1, 2023, HSD and CYFD will provide the Co-Neutrals and the Plaintiffs with: 1) facilitator training tracking logs to reflect HFW facilitators in training, and 2) a Medicaid provider enrollment report to reflect the number of enrolled HFW providers, with a final report to be provided on January 15, 2024 reflecting the status as of January 1, 2024.

4. Critical Incident Review (CIR)

The Parties agree that the following commitments will be implemented to improve compliance with Appendix B, Target Outcomes 2, 3, and 4. While the State's performance with these targets are no longer in dispute, these targets will still be reported and monitored as required under the original terms of the Agreement and CYFD and HSD are obligated to meet the agreed upon Performance Standard as to each target as set forth in the Agreement. The commitments below are to be implemented in addition to the activities set forth in the Agreement for Appendix B, Target Outcomes 2, 3, and 4.

The Parties agree that any determination of medical necessity and the child's best interest must take into account the safety of the child and whether the placement is the least restrictive placement available for the child. In addition, the Parties seek to ensure that there is diligent and careful oversight to ensure the safety of all children in state custody placed in offices, motels, and congregate care settings.

CYFD will provide the Co-Neutrals with written notice via email within one (1) business day of notification to the department of any critical incident regarding a child placed in hotels, motels, offices, out-of-state, in shelters, or in congregate care in New Mexico. Along with the notice of critical incident(s), the State will provide a safety plan for the child, describing services and supports that will be provided as necessary to address the harm of the critical incident and steps that will be taken to protect the child from such harm in the immediate future. Children placed in offices for under 23 hours will be included in the critical incident reviews.

Critical incidents regarding a child placed in hotels, motels, offices, out-of-state, in shelters, or in congregate care in New Mexico include:

- Any 911 call
- Any allegations of harm
- Any allegations of abuse and/or neglect
- Any allegation of restraint/seclusion, and
- Any change in licensure within any facility in which a child in State custody is placed

The Co-Neutral team shall continue to have immediate access to the State's data systems and all records therein regarding the child who is subject to a critical incident pursuant to the Agreement. The Co-Neutral team will be provided with any documents requested related to the placement, including emails related to staffing and oversight of placement decisions. The State shall respond

in writing within two (2) business days to the Co-Neutrals' request for information corresponding to an identified critical incident.

The Co-Neutrals will provide information quarterly to Plaintiffs which will at minimum detail numbers of CIR by type. The CIRs will also be addressed in the Co-Neutral Annual Report.

5. Data Needed to Monitor Progress | Real Time Data

The Parties agree that the following commitments will be implemented to improve compliance with the Appendix B Targets above (BTO 2, 3, 4, 6, and 10). While the State's performance with respect to these targets are no longer in dispute, this target will still be reported and monitored as required under the original terms of the Agreement and CYFD and HSD are obligated to meet the agreed upon Performance Standard as to this target as set forth in the Agreement. The commitments below are to be implemented in addition to the activities set forth in the Agreement for Appendix B, Target Outcomes 2, 3, 4, 6, and 10.

The Parties agree that it is imperative for the State and the Co-Neutrals to have access to real time data to assist the State in meeting the obligations in the Agreement and that the failure to have access to real time data has already delayed needed progress on many deliverables.

In order to more effectively monitor the State's progress, CYFD and HSD agree to provide real time data as follows:

- All data, including real time data, that is being provided pursuant to the MOU dated June 10, 2022 and fully executed on June 15, 2022 (2022 MOU) will continue to be provided.
- In addition, the State will include monthly submissions to the Co-Neutrals on new in-state congregate care placements, including crisis stabilization, clinical congregate care placements, and non-clinical congregate care placements.
- The State will provide medical necessity determination information for new in-state and out-of-state clinical congregate care placements.
- The State will finalize data elements necessary to track progress on foster care recruitment and retention with the Co-Neutrals. The data elements will include quarterly statewide data on gain/loss of non-relative licensed resource homes and data by county.
- In addition to the data regarding treatment foster care to be provided to the Co-Neutrals above in Section 2, the State will provide to Co-Neutrals quarterly data on the total number of treatment foster care homes.
- On a quarterly basis, with one-quarter delay, the State will provide child entry cohort data (children who entered as children in state custody in the prior quarter) to the Co-Neutrals. Beginning on July 1, 2023, the State will provide child entry cohort data between January 1, 2023 and March 31, 2023. These quarterly reports will be provided through January 1, 2024.

6. Pilots

PILOTS FOR COORDINATED ACTION WITHIN LOCAL COMMUNITIES

The Parties agree the following commitments will be implemented to improve compliance with Appendix A, Target Outcome 1, and Appendix B, Target Outcomes 2, 3, 4, 6 and 1. While the State's performance with respect to these targets are no longer in dispute, these targets will still be reported and monitored as required under the original terms of the Agreement and CYFD and HSD are obligated to meet the agreed upon Performance Standard as to each target as set forth in the Agreement. The commitments below are to be implemented in addition to the activities set forth in the Agreement for these targets.

The pilot for coordinated action within local communities reflects the Parties agreement that compliance with the Agreement will require CYFD and HSD to partner at a county office level and to partner with community stakeholders.

PURPOSE: A meaningful, solution-focused collaboration between CYFD, HSD, including their respective Behavioral Health Services and Behavioral Health Services Divisions, and the local child-welfare community to look at current practice, identify strengths and challenges to implementing an integrated system of care that meets the individualized needs of children and their families involved with protective service in their community as guided under the commitments the State has made to strengthen its workforce and to provide a trauma-responsive system of care, strengthen and expand its behavioral health services, comply with ICWA and pursue least restrictive and appropriate placements. Emphasis will be placed on operationalizing all reasonable recommendations and creative solutions brought forward and on building out the availability of any appropriate and needed services, including behavioral and mental health identified in the Agreement, in these communities.

DESIRED OUTCOME: To provide concrete, community-specific recommendations on how to address identified challenges and barriers realistically and effectively to ensure successful implementation of a culturally supportive, trauma-responsive, and identity-affirming system of care for children/youth in CYFD's custody, to fill in any existing service gaps, and further develop services, including behavioral and mental health services identified in the Agreement, in the identified local communities.

Any proposed recommendations shall be reasonable and final decisions around implementing recommendations regarding CYFD's policy, procedures, practices, and procurement is the sole responsibility and authority of the CYFD Cabinet Secretary and Director of Protective Services and the HSD Cabinet Secretary. Should a recommendation be deemed unreasonable or impossible, the State will provide feedback to the facilitator for discussion at future meetings to identify ways to problem solve around such barriers where and when appropriate. Furthermore, the State will

make efforts to implement the reasonable recommendations through various means (*e.g.*, financial or technical assistance) to others such as non-profits or providers if direct implementation by the State is not possible.

WHAT THIS IS NOT: An opportunity to blame or shame anyone at the table or expect that CYFD can implement all recommendations alone. Additionally, this team does not have the authority to generate or create policies or procedures for CYFD, local providers, etc., or procure funding or contracts.

FACILITATION and FREQUENCY: Monthly meeting, with offline assignments. Meetings will be facilitated by a neutral third party agreed to by the Parties and contracted by CYFD.

TIMEFRAME: Notwithstanding the January 5, 2024 expiration of this CAP, the State agrees to convene the pilots for coordinated action within local communities from August 1, 2023 through April 30, 2024.

CYFD will contract with a third-party to facilitate meetings and coordinate communication for two teams. The teams will be established in San Juan and Dona Ana counties. Each team will select its own Co-Chairs, determine cadence of data requests and needs, written plans to guide their work, and requested frequency of updates on implementation of recommended strategies. The facilitator and Co-Chairs are responsible for the final report on or before May 31, 2024.

The teams are tasked with reviewing local and statewide data related to the child welfare system and developing innovative, realistic solutions that are responsive to on-the-ground realities. Each team will document its efforts so that their plans and reports can be shared with county offices around the state. The primary focus of the teams is to address foundational components necessary to keep children and youth in safe and family-based settings in their local communities, and to be inclusive of tribal collaboration and youth-voices and choices around appropriate placements.

The Plaintiffs' counsel and the State will work together to identify team participants and facilitators before July 14, 2023. Each team will include the following, but participation will not be mandated for those not employed or contracted by CYFD, HSD, or the Plaintiffs' team:

- A contracted facilitator (may *not* be a current State employee);
- Child Welfare Group Trained IPP champion;
- CYFD County Office Manager (COM) for local community;
- CYFD Regional Office Manager (ROM) for the area;
- CYFD Office of Tribal Affairs representative;
- CYFD Behavioral Health Services representative(s) in the local community;
- HSD representative familiar with the local community, including Behavioral/Medical Health and MAD;
- MCO behavioral health and medical representatives;
- MCO care coordinators from MCOs serving the community;

- Children’s behavioral health and service providers from the local community;
- PSD permanency planning worker(s) in the local community;
- PSD employee responsible for resource family recruitment and/or retention in the local community;
- Youth/former youth and/or parent with lived experience in the local community;
- Resource parent(s) from the local community;
- GAL/Youth Attorney that serves the local community;
- Respondents’ Attorney that serves the local community;
- Children’s court judge or designate;
- Child welfare case worker or designate from Tribes, Nations, and Pueblos with children served in the local community;
- A member of the *Kevin S.* Plaintiffs’ team, who is also a representative from a protection or advocacy system; and
- Any other person that the local team determines would assist them in meeting the purpose of the pilot, with approval of both Co-Chairs.

The State will provide a participation stipend for youth and parents with lived experience. The State will ensure childcare or respite care and mileage reimbursement for resource parents for their participation in each monthly meeting.

The first and final meeting of each team will be open to the public. The facilitator and Co-Chairs will provide an overview of the team’s findings and recommendations. The public will be provided an opportunity to provide comment during these meetings. At the discretion of the local pilot team, other meetings may be open to the public to obtain additional input.

Each team will be provided the links to all documents related to *Kevin S.* available on the CYFD website. Additionally, teams will be provided with current (aggregated, non-validated) local and statewide data as requested and relevant to the desired outcome.

AREAS OF REVIEW BY THE PILOT TEAMS:

1. Recommendations for strategies to keep children in safe and family-based settings in their local community, and inclusive of tribal and youth-voice and choices around appropriate placements.
 - a. *Pilot Teams will identify strategies to expand the number of culturally responsive resource parents available to provide home-based care for children.*

Strategies can include, but are not limited to:

- Achievable monthly targets for local resource parent recruitment, including respite, Level 1, Level 2 and Level 3 placements.
- Ideas and strategies for Foster Care Plus.

- Identification of barriers (*e.g.*, lack of prompt response to potential resource parents, reimbursement issues, etc.) and recommended strategies to support resource parents (*e.g.*, mentorship, training, etc.).
- Ideas and strategies identified by Nation, Pueblo or Tribal (N/P/T) partners to implement the requirements of IFPA.

CYFD will identify specific persons at CYFD responsible for leading the implementation of resource family recruitment and who will be responsible for reporting on progress to the pilot teams until such time as the independent contractor is hired to lead CYFD's Resource Parent recruitment efforts. Barring any conflict of interest, a representative from the Pilot Team will be selected to serve on the selection committee if CYFD issues a Request for Proposals ("RFP") or Request for Application ("RFA") for recruitment services and efforts.

b. Pilot Teams will make recommendation around staff recruitment and retention strategies aimed at ensuring that reasonable caseload standards are achieved and maintained.

- Based on review of local CYFD positions, broken out by type; identification of all vacant positions by type; and local monthly caseload data by type of position, the pilot teams will make recommendations for local recruitment and retention strategies to meet local vacancy and caseload needs.
- The COM, in collaboration with CYFD leadership, will be responsible for implementing all reasonable strategies to recruit case workers and to manage caseloads and must provide feedback on efforts and ongoing barriers at pilot team meetings.

2. Recommendations on how to build upon, strengthen, or expand access to timely and appropriate trauma-responsive behavioral and medical health services in the local community. At the start of each pilot CYFD and/or HSD will provide the teams with the information needed (including information on continuum of services for families and/or children) to ensure the desired outcomes of the pilot programs can be addressed, and to ensure the purpose and scope of the pilot team and any components thereof are understood.

- Based on a review of local CAT and CANs aggregate data regarding the timeliness with which said screens are completed and shared as required, and assessment/service delays or gaps as available, the teams will recommend reasonable strategies to improve timely provision and proper sharing of screens, if necessary.
- Pilot teams will make recommendations, if needed, on how to better ensure individualized planning meetings (IPMs) are occurring timely, are meaningful to participants, and how to improve the process, if needed.

- Pilot teams will make recommendations, if needed, to improve care coordination. Based on review of local real-time data regarding care coordination, including percentage of required CATs/CANS provided to care coordinators by CYFD, percentage of IPMs that include care coordinators participation, percentage of children who have had EPSDT well-child checks within 30 days of coming into care, and whether services identified by CAT/CANS/EPSDT, IPM teams have been provided within 10 days, pilot teams will recommend strategies to improve care coordination capacity. Particular emphasis will be placed on identifying and expanding the services which are necessary to address the needs of the local community as demonstrated in assessments.
- Pilot Teams will make recommendations, if needed, for improving access to local culturally relevant services, supports, and placements for Native American children/youth, African American children/youth, and other cultural identities served within the child welfare system, as well as LGBTQ+ identities, disability identities, immigration status, and other intersectional identities.
 - The Tribal representative, if they are able to participate, and/or the CYFD Office of Tribal Affairs representative will be invited to identify challenges or successes in local ICWA/IFPA cases for consideration by the pilot team, including a review of local data regarding Native children in CYFD custody; the percentage of children in preferred placements; a review of the quality of OOPP meetings, and make recommendations to improve ICWA/IFPA compliance and strengthen tribal collaboration. Individual child and Nation, Tribe or Pueblo specific information will not be shared.
- The teams will identify strategies, if needed, to strengthen or expand trauma-responsive behavioral health services. Based on review of county data and community discussion, each pilot teams will make recommendations on how to feasibly expand intensive home-based services needed in the community including but not limited to: High Fidelity Wraparound, Mobile Response Stabilization Services, and Therapeutic Foster Care.
- HSD and CYFD will identify specific persons to actively seek to expand services identified by the pilot teams, including working with MCOs and the local behavioral health collaborative serving the pilot sites. These individuals will provide a report on progress and barriers to the pilot teams.

A continuum of interventions is not stagnant and could include the following based on the appropriate assessments, need of the child and the culture of the community at a given time. Services that may be considered by the pilot teams are:

- Mobile Response and Stabilization Services (MRSS)
- Intensive case management services
- Intensive home-based services
- Evidence-based therapies including:
 - Dialectical Behavior Therapy (DBT)
 - Multisystemic Therapy (MST)
 - Cognitive Behavioral Therapy (CBT)
 - Functional Family Therapy (FFT)
 - Eye Movement Desensitization and Reprocessing Therapy (EMDR)
- High Fidelity Wraparound Services
- Family Peer Support Services
- Youth Peer Support Services
- Comprehensive Community Support Services
- Respite Services
- Treatment Foster Care Services
- Respite and additional supportive services
- Community based services for children in state custody with developmental disabilities
 - ABA
- Community based substance abuse services
- Traditional or cultural based healing, arranged and supported by the child's Nation, Pueblo or Tribe
- Community based services for human trafficking
- Other evidence based, well supported, or promising community-based practices for children with complex trauma
- Individual, group or family therapy
- Infant Mental Health array of services, interventions and supports and evidence-based therapies
- Medication management and implementation of CYFD Regulations related to medication management for children in state custody.

The Co-Chairs will provide a monthly report to CYFD and HSD Directors regarding community priorities and recommendations for the areas identified above, including resource parent recruitment, service expansion and strategies identified to improve access to care. CYFD and HSD will identify person(s) responsible for providing specific feedback on recommended strategies that the State determines are not possible to implement allowing the pilot teams an opportunity to refine their recommendation.

STATE REVIEW OF PILOT PROGRESS

HSD and CYFD will identify specific person(s) responsible for overseeing the management and reporting of pilot site activities. Identified person(s) will be responsible for meeting regularly with

the facilitator, the Co-Chairs, and others as deemed appropriate to ensure the pilot site activities and recommendations, as identified by each team, are documented and considered for implementation. Additionally, for approved recommendations, the identified person(s) will also monitor progress on implementation of strategies.

HSD and CYFD will provide the Co-Neutrals and Plaintiffs the work plan and any reports developed by the Pilot Teams and progress made towards approved recommended strategies for implementation on a quarterly basis. Materials developed by the pilot teams will be made public and shared with COMs in other counties to provide for cross-system learning.

CYFD and HSD shall, in accordance with the Performance Standard in the Agreement will make all reasonable efforts to implement recommendations that will improve outcomes for children as contemplated in the Agreement.

II. APPENDIX C TERMS

CYFD and Plaintiffs have reached the following agreements on Appendix C. Plaintiffs were unable to reach agreement with HSD regarding any Appendix C terms.

CYFD and the Plaintiffs agree the following commitments will be implemented to improve compliance with Appendix C. While CYFD's performance under Appendix C is no longer in dispute, the Appendix will still be reported and monitored as required under the original terms of the Agreement and CYFD and HSD are obligated to meet the agreed upon Performance Standard as to each target as set forth in the Agreement. The commitments below are to be implemented in addition to the activities set forth in the Agreement for Appendix C.

CYFD and the Plaintiffs recognize the unique nature of these Appendix C commitments in that full implementation involves not only a strong commitment from CYFD, but ongoing communication and partnership, and consultation when necessary and appropriate, with the 23 N/P/Ts in New Mexico, as well as meaningful engagement of affected Native American children, youth, and families.

The Parties also recognize that Appendix C requires groundbreaking systemic innovations, which will require creativity, flexibility, and an iterative process. To demonstrate and ensure respect for New Mexico's N/P/Ts unique interest and time constraints, CYFD is committed to leveraging standing meetings it has with interested N/P/Ts or their representatives to engage and collaborate to put into practice the system changes further identified below. CYFD agrees to be accountable for responding to the input it receives from N/P/Ts as described below.

CYFD and the Plaintiffs recognize that each of the N/P/Ts are sovereign entities and not parties to the Agreement and that nothing in either this Corrective Action Plan (CAP) or the Final Settlement Agreement (FSA) binds the N/P/Ts and that this CAP cannot commit the N/P/Ts to any activity or engagement contemplated by this CAP or the FSA. Furthermore, the Parties agree each of the

N/P/Ts are in no way obligated to enter into an agreement, contract or engage with either CYFD, and do so at their sole discretion.

CYFD agrees that within two weeks of any signed CAP, it will be shared with the N/P/Ts. The Parties agree that any input from the N/P/Ts regarding this agreement will be shared with all Parties. CYFD agrees to continue to provide the Co-Neutrals and the Plaintiffs with data pursuant to the 2022 MOU.

In addition, CYFD agrees to provide the Co-Neutrals and the Plaintiffs with the number of Native children placed in IFPA preferred placements and the number of Native children not placed in IFPA preferred placements on a monthly basis beginning August 15, 2023.

1. Joint Powers Agreements (JPA)

By September 1, 2023, CYFD will make good faith efforts to engage and negotiate with five N/P/Ts who are interested in a new or revised JPA, with initial outreach being made to the 5 N/P/T with the most children in state custody. Proposed discussions surrounding the JPAs shall include obligations or actions of the State and N/P/Ts regarding children, youth, or families of the respective N/P/T child(ren) who are CISC under Protective Services. Proposed discussions may also include any area of the Indian Child Welfare Act (ICWA) and the Indian Family Protection Act (IFPA) identified and agreed to by the N/P/Ts and CYFD. Pursuant to the interests of the respective N/P/T, JPA discussions and negotiations may also include but are not limited to on-going communication and collaborations (per the State-Tribal Collaboration Act and the IFPA), regarding behavioral health services, culture, data, financial and technical support, jurisdiction, reimbursement for legal services, notice, preferred placement, recruitment and retention of resource families, or relative licensing. The State recognizes the value of services and supports that N/P/T representatives bring to meetings and discussions necessary to improve the State's services for Native CISC. As part of JPA discussions, the State will explore alternative single source contracts for services that benefit N/P/Ts and assist the State in activities related to family preservation, IFPA and ICWA. CYFD also agrees to increase the resources of the General Counsel's Office to negotiate the JPAs as quickly as possible.

By December 31, 2023, CYFD will make good faith efforts to initiate engagement and negotiate with any remaining N/P/Ts who wish to engage in discussions on JPAs. Any current efforts CYFD has taken to collaborate, communicate, and negotiate with N/P/Ts on various matters, including but not limited to JPAs, will continue.

By December 31, 2023, with the explicit knowledge and permission from those N/P/Ts, CYFD will inform the Co-Neutrals on the status of JPAs including presentation materials, if any, including dates of meetings held and numbers of attendees, how many JPAs are being negotiated and projected timeline for completion, if known.

2. Native Resource Family Recruitment & Retention

By July 31, 2023, CYFD will revise the Licensing Standards procedure to include the input provided from previous discussions and review between OTA and representatives of the N/P/Ts. By July 19, 2023, during their standing meetings with N/P/T representatives, CYFD will provide feedback on the specific barriers, if any, to the comments the N/P/T representatives have identified. CYFD will make its revised policy and procedure publicly available upon approval by the Cabinet Secretary.

By July 1, 2023, CYFD will engage with the N/P/Ts to develop a recruitment and retention plan which centers the Native child, family and community and encourages and supports Tribal community-based and family-based alliances. The retention portion of the plan will further provide:

- a. Regular, on-going support provided to the resource family to help ensure the family is well equipped to address the behavioral, physical and psychological needs of the child, as well as ensuring cultural connectedness (as identified by the child's family, tribal community, and N/P/T).
- b. A mechanism to identify and reduce barriers for reimbursement.
- c. A child-family-community centered model where services come to the child, family, and N/P/T.
- d. Allows for specific input from individual Tribes regarding how to best recruit and retain families in a way that will meet the needs of the specific Tribal community, including allowing for financial support to N/P/Ts to provide this service.
- e. An internal paradigm within CYFD of accountability and support to ensure the child and family are provided regular, on-going supportive services based on their individual needs, which fosters and promotes reunification, stable relative and community placement.

In the development of the recruitment and retention plans, CYFD will leverage its current standing meetings with representatives from the N/P/T to engage them in identifying steps toward addressing barriers and providing additional supports throughout the resource family licensing process.

After input from N/P/T, the statewide recruitment and retention plan or the individualized recruitment and retention plans as determined by the preference of the N/P/T will be finalized once the communication and collaboration process has concluded.

CYFD will report to the Co-Neutrals and the Plaintiffs on the status of its efforts under this term quarterly (the 2023 third quarter report will be provided on or before October 23, 2023 and the 2023 fourth quarter report will be provided on or before January 15, 2024).

3. ICWA/IFPA Preferred Placement

By July 31, 2023, the Office of Tribal Affairs (OTA), with the support of Protective Services Division (PSD or PS), will resume as the primary facilitators of CYFD's Out of Preferred Placement (OOPP) meetings. Feedback on the OOPP Team meeting process will be gathered quarterly from representatives of the N/P/Ts and CYFD will work in a collaborative and meaningful way to identify and address any on-going concerns. OOPP procedures will be revised and finalized no later than November 1, 2023. Any OOPP procedural revisions shall be subject to review and approval by the Co-Neutrals as set forth in the Agreement. The Co-Neutrals shall not withhold approval of any policy revisions if such revisions are reasonably calculated to achieve the goals of the Agreement.

- a. Review of all OOPPs (non-compliant with ICWA or IFPA placement preferences):

The placement of Native children with relatives is the highest order of priority.

FIRST LEVEL REVIEW PROCESS: If a Native child is placed in a non-relative home that does not meet the highest order of priority pursuant to ICWA or IFPA, PSD will notify OTA and the child's N/P/T in writing within two business days of the placement and schedule a 30-day relative placement meeting on all ICWA/IFPA cases, to include representation from OTA and a representative from the child's N/P/T. These meetings will be held every 30 days until the child is placed with a relative. The purpose of this meeting is to ensure active efforts to move the child into a relative placement are being made and that recommendations made by the meeting participants have been followed.

- b. **PROPOSED:** Second level internal review process **pending review and feedback from N/P/T representatives:** If the child remains in an OOPP that is not compliant with ICWA or IFPA placement preferences for sixty (60) days, OTA and Protective Services leadership will review barriers and identify next steps, including person(s) responsible, to move the child into the highest order of preferred placement with a relative based on input from representatives of the N/P/T and the child's team. The purpose of the review is to ensure all active efforts are being made and recommendations followed up on by the team members. A Protective Services Field Deputy Director and OTA will communicate in writing to the assigned PS worker, supervisor, and managers, the respective Tribal representative(s), and other participants of the OOPP meetings the findings of the review and specific next steps and time frames for the completion of identified tasks within 15 days of the review. This internal review process will recur every sixty (60) days if the Indian Child remains in an OOPP. Additionally, OTA and the representative from the N/P/T will be notified of the same in writing within two business days.

A review of the current process for this which identifies challenges and solutions with N/P/Ts shall be conducted by July 30, 2023.

4. Resources

With the input from representatives from each N/P/T who are interested, CYFD will engage, negotiate, and develop a written agreement template, regarding N/P/Ts access to financial resources, including Title IV-E funds by November 30, 2023. By November 15, 2023, CYFD will solicit feedback from representatives from the N/P/Ts by leveraging standing meetings hosted by the Office of Tribal Affairs to identify the barriers and challenges currently existing which prevent access to financial resources and identify a process to overcoming those barriers or challenges. In addition, CYFD will review their administrative processes regarding access to funds to make sure that there are not barriers to their use.

CYFD will further support N/P/T representatives who, at their discretion, chose to participate in trainings offered free of cost to them by CYFD which may include but are not limited to: Safe and Together, READ-i NM, Qualified Expert Witness, New Employee Training and trainings offered through existing contracts CYFD has with the New Mexico State University Center for Innovation. CYFD will support and coordinate with N/P/Ts, who at their discretion, choose to host trauma-informed/-responsive training in their communities.

To further support the strategies necessary to achieve the intended outcomes of Appendix C of the Agreement, CYFD will seek to make funding accessible to N/P/Ts, who at their discretion choose to provide services for Native CISC including activities such as resource parent recruitment and retention efforts, home study development services, and/or traditional interventions or culturally responsive services. CYFD will offer single source contracts to interested N/P/T to the maximum extent that such funds are available for these activities. If there are insufficient funds available to offer single source contracts to interested N/P/T, CYFD will include an additional funding in its budget request to the Governor in advance of the 2024 legislative session.

In addition, CYFD will identify and work to secure funding for competitive bid and single source contracts with culturally competent, ICWA and IFPA knowledgeable N/P/T or entities, that have the experience and expertise in working with N/P/T's, communities and families for activities including but not limited to conducting culturally responsive home studies, relative searches, etc. on behalf of Indian children in state custody.

5. Data

By July 30, 2023, CYFD's Office of Tribal Affairs and the Performance and Accountability Director or designated staff will have made good faith efforts to identify any and all New Mexico N/P/Ts who have data request(s), including those for the number and location of children from specific N/P/Ts with CYFD involvement, and establish a plan to respond accordingly based on the nature of those requests which includes a reasonable reporting cadence that is based on the availability of the data and the N/P/Ts' specific request. By December 31, 2023, CYFD will report to the Co-Neutrals the number of data requests made by N/P/T, the date each request was made, and the date that requested data was provided. The content of the data request and the N/P/T that made the request does not need to be reported.

6. IFPA Notice

In recognition of the concern raised by N/T/Ps that CYFD was not consistently providing notice as required by IFPA, CYFD's Office of Tribal Affairs Director and PSD leadership began to meet in June 2023 and shall continue to meet monthly beginning July 2023 to leverage standing meetings which include Tribal partners from N/P/Ts and identify barriers, challenges, and solutions to timely notification and data entry. CYFD's Performance and Accountability Director or staff will join OTA and PSD leadership in meeting quarterly and provide available data to review progress and ongoing challenges as well as contribute ideas around additional solutions.

By July 1, 2023, OTA and PSD will have a plan to solicit input from PSD staff, including investigators, permanency, placement, legal and respective supervisors or County Office Managers, around barriers they are experiencing which prevent timely notification. Solutions to timely notification developed by OTA and PSD leadership will be inclusive of feedback from PSD field staff. CYFD will analyze the feedback, implement its plan and provide the same to the Co-Neutrals by November 1, 2023.

By August 1, 2023, all pre-initiation investigation staffings will include a discussion regarding the active efforts for proper inquiry about whether the child is a member of or there is "reason to know" the child is a member of a N/P/T as well as CYFD's conclusion of whether the child is a member, there is reason to know the child is a member, or the child is not a member or there is reason to know the child is not a member. By July 31, 2023, all pre-initiation staffing forms will be updated to include documentation regarding discussion outlined above.

By August 1, 2023, if CYFD concludes the child is a member or there is reason to know the child is a member of a N/P/T:

- a. the supervisor will review the Notice of Investigation to ensure it is thoroughly completed and emailed to the proper N/P/T and cc: ICWA.Notice@cyfd.nm.gov, and document in CYFD's electronic data management system that the notice and their review was completed.
- b. Certified Notice with return receipt requested will be sent to the N/P/T pursuant to IFPA. CYFD will document in the electronic data management system the date the certified notice was mailed and the date the return receipt indicates the N/P/T received the notice. These documents will be placed in the corresponding physical file with a comment in the electronic data management system indicating the same.
- c. Supervisors will conduct a monthly review of ICWA/IFPA cases in FACTS and the corresponding physical file to ensure timely and accurate entries are occurring. This includes appropriate narrative entries as described above and demographic data to ensure N/P/Ts are correctly identified. Supervisor case reviews will be documented in the electronic data management system (FACTS).

CYFD agrees to ensure that OTA has sufficient staff to be able to implement these terms.

7. Listening Session Follow-up

CYFD agrees to host an event before by December 1, 2023 to address the needs of Native CISC. The event will take into account the interests of N/P/Ts and may include a number of issues that impact Native CISC and their N/P/Ts such as discussion of behavioral health services and the provision of culturally appropriate trauma responsive services to Native CISC.

N/P/T will be provided with opportunities to learn about all Kevin S. deliverables, the progress the State is making on the deliverables, and opportunities to provide input on them. The Co-Neutrals and Plaintiffs' counsel will be invited to attend this follow-up session.

III. APPENDIX D TERMS

The Parties agree the following commitments will be implemented to improve compliance with Appendix D, Target Outcome 4. While the State's performance with respect to this target is no longer in dispute, this target will still be reported and monitored as required under the original terms of the Agreement and CYFD and HSD are obligated to meet the agreed upon Performance Standard as to the target as set forth in the Agreement. The commitments below are to be implemented in addition to the activities set forth in the Agreement for Appendix D, Target Outcome 4.

To come into compliance with the FSA Requirement that 100% of CISC will receive a Well-Child visit within 30 days of entering state custody, HSD and CYFD will implement the following plan to ensure that 100% of children will receive a comprehensive Well-Child visit within 30 days of entering state custody. This plan also outlines monthly reporting requirements regarding the implementation and ongoing monitoring of comprehensive Well-Child visits.

- CYFD will establish the CYFD Category of Eligibility (COE) within 6-8 days of the child being received into state custody to ensure timely entry into the Medicaid eligibility system. Currently, this process takes up to 30 days, creating delays in receipt of eligibility information by the MCO and in facilitating an appointment for the Well-Child visit. By July 1, 2023, CYFD will issue a clarifying email regarding its procedures which will include the following:
 1. CYFD staff will ensure that placements are opened for children within two business days of entering custody; and
 2. Once the placement is open, it will batch overnight and be sent to the tickler tab of the IV-E Specialist the following morning to enter the COE determination and ensure MCO selection if not already made; and

Once the determination is made, it takes 24-48 hours to batch and show the COE in the Medicaid portal.

3. HSD will ensure that the MCOs review the enrollment data file uploaded by HSD daily to identify each child entering a CYFD COE. (Per LOD-69-1)

- HSD will ensure that the MCOs contact the member's assigned CYFD Permanency Planning Worker (PPW) within three (3) business days of notification of the child's enrollment and assign a care coordinator to engage with the child and/or the child's team. The MCO will request contact information for the child's caregiver/resource parent, legal representative (GAL/Youth Attorney), parent/guardian and legal custodian (CYFD) during this contact. The CYFD PPW will provide all information to the MCO to ensure needed coordination with the persons necessary to accompany and attend the child's appointment. (Per LOD-69-1)
- To ensure that the Well-Child visit is scheduled to occur within 30 days of entry into state custody, HSD will require the MCO to utilize their internal resources, including the child's assigned care coordinator, a community health worker, a care worker, or a tribal liaison to ensure that the visit is scheduled in collaboration with the child and the child's legal custodian (CYFD PPW), caregiver/resource parent, and parent/guardian (where appropriate) to avoid scheduling conflicts and to ensure that barriers such as transportation and language access have been addressed. Care coordination efforts will be documented.
- HSD will ensure that the MCOs document that the child's legal custodian (CYFD PPW), caregiver/resource parent, and parent/guardian (where appropriate) was offered education on the importance of the Well-Child visit and the availability of supports (such as transportation and translation services) to support appointment adherence. The CYFD PPW will ensure that all caregivers are aware of how to access MCO care coordination services and of the availability of support through care coordination to schedule the Well-Child visit. The MCO and CYFD will document when the child and/or caregiver/resource parent is difficult to engage, refuses care coordination, and/or declines assistance with scheduling the appointment and all efforts to engage the child and/or caregiver/resource parent. The MCO and CYFD will also document instances in which the child's caregiver/resource parent is not able to make appointments within 30 days due to a scheduling issue in the household and will document all efforts made to accommodate any such scheduling issue. HSD will issue a Letter of Direction to the MCOs regarding their obligations in this CAP by July 1, 2023.

When the child and/or the child's caregiver/resource parent declines assistance with scheduling the appointment, the MCO will be required to follow up with the child and/or child's caregiver/resource parent within 10 days of the declination. If the appointment has still not been scheduled, the MCO will once again offer assistance to the child and/or the child's caregiver/resource parent.

HSD will ensure that the MCOs utilize available provider resources, including the child's Primary Care Provider (PCP), School Based Health Centers (SBHCs), Federally Qualified Health Centers (FQHCs), Rural Health Clinic (RHCs), and/or tribal providers to schedule the comprehensive Well-Child visit. HSD will mandate that the MCOs

promptly reimburse providers in compliance with the timeline requirements within the MCO contract, section 4.19 Claims Management. and provide education and training to providers to understand the requirement for a Well-Child visit within 30 days of entry into state custody. HSD agrees to communicate this requirement through an LOD by July 1, 2023.

For children who are in the fee-for-service (FFS) Medicaid program or for MCO enrolled children for whom all provider options have been exhausted and after 21 days after entry into state custody an appointment has not been scheduled, HSD and CYFD will enter into a Memorandum of Understanding (MOU) to facilitate Well-Child visits so that the visit occurs within 30 days of the child entering custody through public health offices at the Department of Health (DOH). The MOU will allow HSD, CYFD and the MCOs to work directly with DOH on facilitating Well-Child visits for children in state custody through Public Health Offices around the state.

- The State will come into full compliance with Target Outcome 4 (100% of children in state custody receiving a Well-Child visit within 30 days) by January 1, 2024; this target is for remedial purposes and does not change the FSA deliverable date.

By July 1, 2023, HSD will begin implementing the following validation protocol:

1. HSD will establish a process with the MCO care coordinators to collect information and report on completion of well-child visits for children.
2. CYFD will ensure case workers are entering completion of well-child visits in FACTS.
3. CYFD will run monthly reports on performance of completed well-child visits within 30 days of children entering care beginning with all children who enter care on July 1, 2023 and later. CYFD will spot check these reports for accuracy with the data provided by HSD from care coordinators. For the purposes of ensuring compliance, the validation will not include any children in custody less than 30 days.
4. By the 5th of the month following when well-child visits should occur for children newly entering care, the State will provide monthly performance data which has undergone an initial QA check to the Co-Neutrals. For example, performance data for children who entered care in July 2023 will be provided on September 5, 2023, performance data for children who entered care in August 2023 will be provided on October 5, 2023, and so on. The final data submission will be provided on January 5, 2024 for children who enter care in November 2023.
5. The Co-Neutrals will request documentation verifying completion of a well-child visit for a sample of 50% of children, but not more than 25 children. The State will provide the requested information to the Co-Neutrals within 5 business days. Through the validation work, if the Co-Neutrals identify issues, they can request information for more than 25 children in a month. The Co-Neutrals will share validation findings with the State and Plaintiffs.

- The State will ensure that all children who entered care before July 1, 2023 and are still in custody on September 15, 2023 have a completed well-child visit by September 15, 2023. The Co-Neutrals will request documentation verifying completion of a well-child visit for a sample of 10% of children in the pre-July 1, 2023 cohort. The Co-Neutrals will share validation findings with the State and Plaintiffs.

IV. OTHER TERMS

Nothing in this CAP shall preclude either Party from exercising their rights under the Agreement including, but not limited to, Plaintiffs' right to arbitrate any and all remaining unresolved issues and to secure any and all relief and remedies provided by the Agreement.

Dated: 6/30/2023

By:

DocuSigned by:

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 Teresa Casados, *Interim Cabinet, Secretary*
 NEW MEXICO CHILDREN, YOUTH AND FAMILIES
 DEPARTMENT]

Dated: 6/30/2023

By:

DocuSigned by:

 1BA9EB5EAD00499...
 Kari Armijo, *Acting Cabinet Secretary*
 NEW MEXICO HUMAN SERVICES DEPARTMENT

Dated: 6/30/2023

By:

DocuSigned by:

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 Tara Ford
 PLAINTIFFS' IMPLEMENTATION TEAM

EXHIBIT A

From: Tara Ford <
Sent: Friday, January 6, 2023 3:33 PM
To: Vigil, Barbara, CYFD <Barbara.Vigil@cyfd.nm.gov>; Scrase, David, HSD <david.scrase@hsd.nm.gov>
Cc: Lauer, Alisa, CYFD <Alisa.Lauer@cyfd.nm.gov>; Ritzma, Paul, HSD <paul.ritzma@hsd.nm.gov>; Kevin Ryan
Subject: [EXTERNAL] Plaintiffs' Initiate Dispute Resolution- Request Dates for Mediation

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

All,

I am writing to initiate Step 1 of the dispute resolution process described in Section IX of the *Kevin S. Final Settlement Agreement* (“Settlement Agreement”).

At this time, Plaintiffs invoke the dispute resolution process with respect to each and every Implementation Target and Target Outcome validated by the Co-Neutrals in their November 15, 2022 Report (“November 2022 Report”) with findings that HSD and CYFD failed to meet the Performance Standard agreed to in the Settlement Agreement. Plaintiffs’ position with respect to each of these issues is that CYFD and HSD have not met their obligations under the Settlement Agreement.

Given the failure to meet the Performance Standard on over half of the Implementation Targets and total failure to meet the Performance Standard on every Target Outcome measured for the November 2022 Report, Plaintiffs’ position is that CYFD and HSD have failed to adequately staff their efforts to meet their obligations under the Settlement

Agreement.

In further support of Plaintiffs' position that CYFD and HSD are not adequately staffed to comply with their *Kevin S.* obligations, we note that Plaintiffs initiated Step 1 of the dispute resolution process on December 8, 2021 to address issues identified in the Co-Neutral's 2021 Report. In June 2022, the Parties reached an Memorandum Of Understanding ("MOU") to resolve many of the issues raised in the Plaintiffs' December 8, 2021 dispute, yet CYFD and HSD failed to fully implement the MOU with respect to several specific deliverables.^[1] In addition, the Parties were unable to reach agreement on two key concepts related to the Settlement Agreement: 1) the requirement that there must be consideration of whether community-based services had been or could be provided when determining medical necessity; and 2) reaching an agreement on the definition of extraordinary circumstances. The lack of agreement on these key concepts related to the Settlement Agreement and the areas of non-compliance with the MOU are outstanding disputes and Plaintiffs reserve the right to seek arbitration related to the December 8, 2021 notice of dispute.

It is Plaintiffs' position that resolution of the issues in this dispute must prioritize and measurably address the four recommendations identified in the November 2022 Co-Neutral Report:

- (1) strengthening and stabilizing the CYFD and HSD workforce;
- (2) growing resource family placements;
- (3) expanding behavioral and mental health services; and
- (4) strengthening the collaboration and communication with New Mexico's Nations, Pueblos, and Tribes.

Resolution will also require adequate staffing and management by HSD and CYFD of the obligations under the Agreement. In addition, it is Plaintiffs' position that HSD and CYFD need to provide real time data to the Co-Neutrals for more frequent validated progress reports to enable the parties to timely monitor progress under the Settlement Agreement.

We are invoking the mediation process in hopes of reaching agreement among all Parties about what steps CYFD and HSD will take to bring the agencies into compliance with their obligations under the Settlement Agreement. We will come prepared with proposals for a corrective action plan and encourage all other Parties to do the same.

Best,

Tara
On Behalf of the *Kevin S.* Implementation Team

[1] Plaintiffs note that on December 23, 2022, Defendants provided Plaintiffs with a response outlining their position regarding their compliance with the MOU terms related to Appendix B and proposals for how to either meet or revise the MOU. To date, we have still not received the State's responses outlining their position on the MOU terms related to Appendix C. The parties have not reached agreement regarding the State's compliance or the appropriate steps necessary to implement the MOU.

Tara Ford

(she/her/hers)

Senior Counsel, Opportunity Under Law



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^[1] Plaintiffs note that on December 23, 2022, Defendants provided Plaintiffs with their responses outlining their position regarding their compliance with the MOU terms related to Appendix B and proposals for how to either meet or revise the MOU. To date, we have still not received the State's responses outlining their position on the MOU terms related to Appendix C. The parties have not reached agreement regarding the State's compliance or the appropriate steps necessary to implement the MOU.