July 15, 2024

File No.: 913216

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Re: ***Kevin S., et al. v. Blalock, et al.*, No. 1:18-cv-00896**

AMENDED NOTICE OF ARBITRATION

I. Introduction

Pursuant to Section IX of the Parties' March 2020 Final Settlement Agreement ("FSA") in the matter of *Kevin S. v Blalock, et al.*,[1] and the Parties' June 2023 Corrective Action Plan ("CAP"),[2] Plaintiffs notify you of their intention to proceed to arbitration to adopt the Co-Neutrals' findings made in their January 2024 letter[3] and their February 2024 CAP Implementation Memorandum[4] and to seek enforcement of the CAP.[5]

Plaintiffs amend the Notice of Arbitration dated May 20, 2024 to clarify Plaintiffs respectfully request the Arbitrator order specific performance to enforce the CAP, award attorneys' fees and costs and any other relief that the Arbitrator deems fair and proper, including but not limited to the relief available under the FSA.

In the four years since the *Kevin S.* lawsuit settled, the Co-Neutrals have consistently reported that CYFD and HSD have not complied with the crucial measures they contractually agreed to undertake to protect children in state custody in exchange for Plaintiffs dismissing the lawsuit. Most recently, in the 2023 CAP, the State agreed to perform a series of specific, measurable deliverables by December 2023. After the CAP's deadlines expired, the Co-Neutrals

[1] The FSA is attached as Exhibit A.
[2] The 2023 CAP is attached as Exhibit B.
[3] The January 26, 2024 letter is attached as Exhibit D.
[4] The February 23, 2024 CAP Implementation Memorandum is attached as Exhibit E.
[5] Nothing in this notice is intended to waive other arbitration claims that may develop after additional reports by the Co-Neutrals or as other evidence is later discovered.

investigated the State's performance over that six-month period agreed to in the CAP and found that the State failed to keep its promises.

The State's breach of the CAP is not just a breach of contract. It is a series of fundamental programmatic failures that endanger children in state custody across New Mexico. Indeed, after the Co-Neutrals' assessment in September 2023, which described a child welfare system in a "state of chaos," the Co-Neutrals reported in January 2024 that "[t]he State's weak performance implementing many aspects of the CAP – for example, with respect to caseloads and focused resource family recruitment – appears to have worsened the situation."[6] The result is "serious risk[] to child and staff safety."[7]

II. Procedure

Under the FSA, the Parties agreed to engage in alternative dispute resolution (Step 1) prior to initiating binding arbitration (Step 2). Plaintiffs have fulfilled this precondition. In December 2021, Plaintiffs initiated Step 1 based on CYFD and HSD's failure to comply with the FSA. Mediation resulted in the Parties' June 2022 Memorandum of Understanding ("2022 MOU"), which supplemented the FSA and set forth commitments the State agreed to undertake to come into compliance with the State's obligations under the FSA.[8] In January 2023, based on CYFD and HSD's continued breach of the FSA and noncompliance with the 2022 MOU, Plaintiffs again initiated Step 1 in continued efforts to work with the State. Mediation resulted in the Parties' June 2023 CAP, which again supplemented the FSA and the 2022 MOU and obligated the State to take and accomplish specific goals in order to comply with its contractual obligations it agreed to under the FSA, including promises regarding workforce development, reduction of caseloads, recruitment of resource families, and the provision of critical healthcare to children in state custody.

Pursuant to the terms of the FSA, the Parties agreed that the Co-Neutrals would determine if Defendants met their contractual obligations to undertake Implementation Targets and reach Target Outcomes in exchange for Plaintiffs' dismissing the litigation.[9] As provided by Section IX(A), if a party breached the FSA or a corrective action plan agreed to in a subsequent ADR process, then a party could proceed to arbitration.[10] As outlined below, the Co-Neutrals have found, based on the data provided by Defendants, that Defendants have failed to keep their promises made in the CAP. Defendants now have the burden to show that the Co-Neutrals' report was clearly erroneous.[11]

[6] Letter from Co-Neutrals to the Parties (Sept. 18, 2023) (Re: Follow up from Co-Neutrals' Site Visit) is attached as Exhibit C; Letter from Co-Neutrals to the Parties (Jan. 26, 2024) (Re: Follow up from Co-Neutrals' Site Visit) is attached as Exhibit D.
[7] *See* Exhibit D.
[8] *See* Exhibit B.
[9] *See* Exhibit A, FSA Section VI(A) and (B).
[10] *Id*, FSA Section IX(A).
[11] *Id*. FSA Sections VI and IX.

III. Disputes for Arbitration

The State has breached its obligations under the CAP in four areas.

A. CYFD Workforce Caseloads

In the CAP, CYFD promised to reach the following caseloads standards as follows:

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.

As provided in the Co-Neutrals' CAP Implementation Memorandum, the Co-Neutrals determined based on the data submitted by the State, 19 percent of case-assignable CYFD workers had caseloads above 200% of the applicable caseload standard.[12] Of CYFD workers assigned as a primary worker on at least one case, 13 percent were supervisors.[13] CYFD has breached its contractual obligations under the CAP regarding caseloads.

B. Resource Family Recruitment

In the CAP, CYFD and HSD are required to coordinate and find Treatment Foster Care (TFC) placements for children in state custody that are enrolled in a managed care organization.[14] As such, CYFD and HSD are necessarily responsible for recruiting additional TFC placements. In addition, CYFD promised to reach the following standards regarding resource family recruitment.

a) 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.

b) 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.

In September 2023, the Co-Neutrals interviewed workers at two of the five high-needs counties, and "no one interviewed in either office was able to identify a placement worker whose

[12] Co-Neutrals' Corrective Action Plan (CAP) Implementation Memorandum at 4-5 (Feb. 23, 2024) (with attachments 1 and 2) (*hereinafter* Co-Neutrals' CAP Memo) is attached as Exhibit E.
[13] *Id*. at 5.
[14] CAP at 4.

sole, or even primary, responsibility was resource home recruitment."[15] Based on data submitted by the State, only one of these five counties saw any meaningful progress with resource family recruitment in the period between June 30, 2023 and November 30, 2023, with three showing *net losses* in the number of licensed resource homes.[16]

Nor is there any evidence that the State is working on contracting with a private contractor to develop better resource family recruitment in each county throughout the state. Based on their investigation, the Co-Neutrals are "unable to confirm that specific capacity focused on growing new resource homes in each county throughout the State has been added pursuant to the CAP commitments."[17] Instead, their investigation indicated that CYFD "appears to have lost ground" with resource family recruitment; workers report that planning for resource family recruitment is discussed on an ad hoc basis, and there is no funding available for resource family recruitment activities.[18] As of the State's agreed upon deadline, the State has failed to launch the private contractor recruitment model in a single county.[19]

C. Well-Child Visits

In the CAP, CYFD and HSD committed to providing the Co-Neutrals with necessary data to report on and to meet the following standards regarding well-child visits:

a) 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.

b) 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 reported that as of January 4, 2024 the available data "do[es] not indicate that all children in state custody received a completed well-child visit within 30 days of entering care."[20] Of the records the Co-Neutrals were able to review, over 25 percent of children who entered care in 2023 did not have a well-child visit within 30 days of entry.

D. Data Submissions

The State promised in the CAP to provide the Co-Neutrals with real-time data necessary for the Co-Neutrals to report on the State's compliance. In January 2024, the Co-Neutrals reported they were missing multiple important data submissions from the State.[21] Within the timeline requested, the Co-Neutrals did not receive:

[15] Co-Neutrals' CAP Memo at 8
[16] *Id*. at 8.
[17] *Id*. at 9.
[18] *Id*. at 9.
[19] *Id*. at 9.
[20] *Id*. at 18.
[21] *Id*. at 18-19.

1) Quarterly data on the total number of Treatment Foster Care ("TFC") homes.

2) Well-child records for over one-third of children whose records were requested by the Co-Neutrals.

These failures to provide data to the Co-Neutrals are also a breach of the CAP.

E. Plaintiffs' Request for Additional Documentation of Compliance

On March 5, 2024, Plaintiffs requested CYFD and HSD provide Plaintiffs with the State's position regarding the Co-Neutrals' findings set forth in Co-Neutrals' CAP Memo.[22] The State responded by letter dated March 12, 2024, which letter did not dispute that key elements of the CAP were not achieved.[23]

IV. Conclusion

The Co-Neutrals' findings clearly demonstrate that the State has not performed a number of its essential obligations in the CAP—promises that the Co-Neutrals have repeatedly stressed are crucial to the safety and wellbeing of children in state custody in New Mexico. Plaintiffs remain committed to enforcing CYFD and HSD's contractual promises. Based on the State's breach of the CAP, Plaintiffs are seeking specific performance of the CAP, attorneys' fees and costs, and any other relief that the Arbitrator deems fair and proper, including but not limited to the relief available under the FSA.

Respectfully submitted,

F. Michael Hart
Martinez, Hart, Sanchez & Romero, P.C.

/s/ Christina West
Christina West
Kayla Jankowski
Barnhouse Keegan Solimon & West, LLP

Tara Ford
Public Counsel

[22] Letter from Plaintiffs' Counsel to Secretary Casados and Secretary Armijo dated March 5, 2024 is attached as Exhibit F.
[23] Letter from Secretary Casados and Secretary Armijo to Plaintiffs' Counsel dated March 12, 2024 is attached as Exhibit G.

_____

Enclosures: Exhibits A through G

cc w/enclosures:
Charles R. Peifer
Eric Loman & Travis G. Jackson, Counsel for State Defendants
Mark Reynolds, General Counsel, HSD
Justin Boyd, *General Counsel CYFD*

EXHIBIT A

SETTLEMENT AGREEMENT

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APPENDICES

SETTLEMENT AGREEMENT

I. PURPOSE AND OBJECTIVES

The purpose of this Agreement is to set forth a plan and process for CYFD and HSD to improve the current system of care so that it is trauma-responsive and compliant with Section 504 of the Rehabilitation Act; the Americans with Disabilities Act; the Fourteenth Amendment to the United States Constitution; the Medicaid Act's Early and Periodic Screening Diagnostic and Treatment Services (EPSDT) and Reasonable Promptness Provisions (42 U.S.C. § 1396 et seq.); and the Indian Child Welfare Act (25 U.S.C. § 1915(a) & (b)).

II. DEFINITIONS

For purposes of this Agreement, the following definitions apply. Where these terms are further described in the Agreement, the definitions in these sections are not intended to be and should not be interpreted as limiting such descriptions.

Agencies or **Departments** means CYFD and HSD.

Agreement means this Settlement Agreement and its Appendices.

Behavioral Health Care Workforce Development Review is the plan described in Implementation Target 1 in Appendix D.

Case or ***Kevin S.* Litigation** means *KEVIN S., et al. v. BLALOCK, et al.*, Case No. 1:18-cv-00896, in the United States District Court for the District of New Mexico.

Child(ren) in State Custody means child(ren) and youth in the legal custody of CYFD's Protective Services division, including Native Children and children never removed from the Respondent's home or children returned to the Respondent's home following a removal.

Children's Code means the New Mexico Children's Code.

Co-Neutrals means the individuals the Parties hereby agree to give the powers set forth below.

CYFD means the New Mexico Children, Youth and Families Department.

CYFD Workforce Development Plan means the plan discussed in Target Outcome 10 in Appendix B.

Data Validation Plan means the plan that Defendants will make, with the Co-Neutrals' approval, to establish a baseline and track progress toward each Target Outcome. Completion of the Data Validation Plan pursuant to this Agreement is an Implementation Target.

Day or Days means calendar days unless business days are expressly identified as the relevant period of time. Any deadline falling on a weekend or holiday will be extended to the next non-holiday weekday.

Defendants means the named defendants in the *Kevin S.* litigation. Defendants' Counsel refers to the Office of General Counsel for CYFD and HSD or their designees.

Effective Date means the date that this Agreement is executed by representatives of all Parties.

Goals means a set of high-level objectives that the Target Outcomes and the Implementation Targets are designed to achieve. While the Goals themselves are not binding or enforceable, they may be considered to help inform and interpret other aspects of the Agreement and Appendices, including the Co-Neutrals' assessment of Defendants' efforts to achieve the Implementation Targets and Target Outcomes.

Guardian(s) ad Litem means an attorney appointed by the children's court to represent and protect the best interests of the child in an abuse and neglect case under the New Mexico Children's Code who has the powers and duties described in N.M. Stat. § 32A-1-7.

HSD means the New Mexico Human Services Department.

Implementation Targets are steps that Defendants will take to fulfill the terms of this Agreement and to reach the Target Outcomes.

Individualized Planning Meeting means the meetings described in Target Outcome 4 in Appendix A and referenced in the other Appendices.

Individualized Planning Meeting Plan means the plan described in Target Outcome 4 in Appendix A.

Kevin S. refers to the lawsuit pending in the United States District Court for the District of New Mexico captioned *Kevin S., et al. vs. Blalock, et al.*, Case No. 1:18-cv-00896-WJ-LF.

MCO means Managed Care Organizations that contract with HSD and their successors.

Native Child(ren) is defined as "Indian child(ren)" under N.M. Stat. § 32A-1-4.

New Mexico Tribes and Pueblos is all tribes, pueblos, and nations in New Mexico.

Parties refers to Plaintiffs and Defendants in the *Kevin S.* litigation.

Party used in the singular means any Plaintiff or any Defendant.

Performance Standard refers to the level of achievement Defendants must meet with respect to each Implementation Target and Target Outcome in order to fulfill the terms of the Agreement. Meeting the Performance Standard means making good faith efforts to achieve substantial and

sustained progress toward achieving the Implementation Target or Target Outcome. A finding of good faith efforts to achieve substantial and sustained progress toward achieving the Implementation Target or Target Outcome shall be based on whether Defendants have made all reasonable efforts to achieve each Implementation Target or Target Outcome. This standard is not intended to assess Defendants' subjective intentions, plans, or promises.

Plaintiffs are the named plaintiffs in the *Kevin S.* litigation and their representatives.

Proposed Class means the class of plaintiffs defined in Plaintiffs' First Amended Complaint filed in the *Kevin S.* Litigation.

Quality Assurance, Improvement, and Evaluation Plan means the plan described in Target Outcome 5 in Appendix A.

Resource Family means a person or persons, including a relative of the child, licensed or certified by the Department or a child placement agency to provide care for children in the custody of the Department or agency.

Respondent(s) are defendant(s) in an abuse and neglect case under the New Mexico Children's Code.

State is the State of New Mexico.

Target Outcomes are specific achievements that Defendants agree to meet to fulfill the terms of this Agreement. The Target Outcomes appear in the Appendices to this Agreement.

Trauma-Responsive Training and Coaching Plan refers to the plan described in Implementation Target 2 in Appendix A.

Youth Attorney(s) means an attorney appointed by the children's court to represent the child in an abuse and neglect case under the New Mexico Children's Code who has the powers and duties described in NM Stat § 32A-1-7.1.

III. EFFECTIVE DATE AND EFFECT OF AGREEMENT

This Agreement will take effect on the date it is signed by representatives of all Parties. It will expire when Defendants have satisfied the certification process in Section VIII for all Implementation Targets and Target Outcomes. In the alternative, the Agreement may also expire if the arbitrator engaged through the dispute resolution process set forth in Section IX concludes that a Party has committed a material breach of this Agreement and no lesser remedy than expiration can satisfy the Parties' expectations in entering into this Agreement.

IV. NO ADMISSIONS OF LIABILITY

This Agreement is not an admission of liability or wrongdoing by Defendants. Defendants entered into this Agreement for the purpose of achieving system reform and to avoid the expense and diversion of resources caused by litigation.

V. GOALS

The Goals of this Agreement are to:

1. Develop and implement a system of care that utilizes collaborative decision-making to guide interagency efforts to coordinate delivery of care to Children in State Custody in a trauma-responsive manner.

2. Improve services and outcomes for families and youth.

3. Increase collaboration among child-serving agencies in order to reduce fragmentation of services and avoid duplication and waste.

4. Ensure sufficient human resources to meet the needs of Children in State Custody including trained caseworkers, foster parents, kin foster parents, and behavioral health providers.

5. Set up practices and procedures to enable the State to comply with ICWA and provide culturally appropriate and relevant care to Children in State Custody and their families.

6. Develop and implement trauma-responsive training and coaching for caseworkers, foster parents, kin foster parents, out-of-home providers, and respondents/parents.

7. Establish a consistent screening, assessment, and referral procedure statewide that will facilitate access to medically necessary services for all Children in State Custody.

8. Improve the delivery of intensive home- and community-based services to eligible Children in State Custody.

9. Minimize congregate care and maximize the potential of Children in State Custody to grow into healthy and independent adults.

10. Identify and measure quality management tools to report on, provide, and improve the quality of care provided to Children in State Custody, and to provide transparency and accountability.

11. Provide due process to the Proposed Class.

VI. PROCESS

A. Co-Neutrals

Appointment: The Parties appoint Kevin Ryan, Judith Meltzer, and Pamela Hyde as the three Co-Neutrals referenced in this Agreement. In the event that any of the Co-Neutrals are unavailable to serve in this role or become unable to serve in this role during the term of this Agreement, the Parties agree to appoint a subject matter expert to serve in their place, so that there are always three Co-Neutrals at any time.

Role as Neutrals: The Co-Neutrals shall function in a neutral capacity and shall exercise their duties under this Agreement in good faith and without bias in favor of or against any Party. The retention of the Co-Neutrals shall be conducted solely pursuant to the procedures set forth in this Agreement and shall not be governed by any formal or legal procurement requirements. The Co-Neutrals shall hire such staff and engage such consultants as the Co-Neutrals deem necessary to discharge their responsibilities under this Agreement. As a courtesy, the Co-Neutrals shall provide the resumes of any staff members or consultants working on the implementation of this Agreement to Defendants, but Defendants shall not have any authority over the Co-Neutrals' choice or assignment of staff members and/or consultants.

Fees: Defendants shall be responsible for paying the Co-Neutrals' fees and costs and the fees and costs required for staff and/or consultants assisting the Co-Neutrals.

Authority: The Co-Neutrals shall have the authority reasonably necessary to validate baseline performance related to all Target Outcomes and to evaluate and audit progress toward achievement of the Implementation Targets and Target Outcomes. That authority includes the ability to hire staff and engage consultants; contract with entities for data analysis and/or validation; request and receive reports and updates at regular intervals; request underlying data, files, and records; conduct verification activities, including communicating independently with any individual, including but not limited to executive branch staff, providers, caregivers and others as they determine necessary; and gather other information from Defendants. Defendants shall provide the Co-Neutrals with remote access to the Agencies' electronic data systems that collect or record information necessary to validate performance under this Agreement. All final reports prepared by the Co-Neutrals in connection with this Agreement shall be public documents and shall be posted on the Parties' websites. The Co-Neutrals shall have the authority to change the deadlines for the Co-Neutrals' reports, but changes to any such deadlines will not have the effect of changing the deadlines for Defendants' reports.

B. Implementation Targets and Target Outcomes

Implementation Targets are process commitments that Defendants agree to undertake as intermediary and necessary steps toward reaching the Target Outcomes.

Target Outcomes are performance commitments that Defendants agree to reach in consideration for Plaintiffs' agreement to dismiss the *Kevin S.* Litigation.

The Appendices define and set forth Implementation Targets and Target Outcomes in the following subject areas:

– **Trauma-Responsive System of Care** (Appendix A)

– **Least Restrictive and Appropriate Placements** (Appendix B)

– **Indian Child Welfare Act** (Appendix C)

– **Behavioral Health Services** (Appendix D)

Deadlines: The Parties have negotiated specific completion dates for each Implementation Target and Target Outcome. Defendants agree to adhere to these deadlines. The Parties may not modify, amend or extend these deadlines other than by mutual consent in writing.

C. Implementation

1. Data Validation Plan: By December 1, 2020, Defendants will submit to Plaintiffs and the Co-Neutrals a written Data Validation Plan that has been approved by the Co-Neutrals. Defendants and the Co-Neutrals shall begin to collaborate on the Data Validation Plan by March 15, 2020. The Data Validation Plan will set forth a process, including methodology and data sources, for validating Defendants' progress toward achieving the Implementation Targets and Target Outcomes. The Data Validation Plan will set clear timelines for taking any intermediary steps necessary to validate progress toward the Implementation Targets and Target Outcomes and assign responsibility for supplying information necessary to fulfill the Data Validation Plan. The Co-Neutrals will evaluate the Data Validation Plan in consultation with each Party.

Completion of a Data Validation Plan that has the approval of the Co-Neutrals is an Implementation Target. The Parties will attempt to resolve any disagreements about the Data Validation Plan in good faith. If they cannot do so, any disputes about the Data Validation Plan shall proceed through the dispute resolution process in Section IX on an expedited basis, with deadlines set by the Co-Neutrals and the arbitrator, as appropriate.

2. Baseline Reports: By December 1, 2020, Defendants will provide to Plaintiffs and the Co-Neutrals a baseline report and all data underlying the report. The baseline report shall assess Defendants' achievement of the Implementation Targets. It shall also describe Defendants' baseline performance with respect to the Target Outcomes during the period from January 1, 2019 to December 31, 2019.

By April 1, 2021, the Co-Neutrals shall provide a baseline report to Plaintiffs and Defendants. The Co-Neutrals' baseline report shall validate Defendants' achievement of the Implementation Targets pursuant to the Data Validation Plan and shall include a determination of whether Defendants have met the Performance Standard with respect to each Implementation Target. The Co-Neutrals' baseline report shall also validate Defendants' performance with respect to the Target Outcomes during the period from January 1, 2019 to December 31, 2019.

If the Co-Neutrals cannot validate Defendants' data in accordance with the Data Validation Plan for any reason, including but not limited to concerns about availability or accuracy of data sources, the Co-Neutrals and their staff and/or consultants will establish a baseline using a quantitative and qualitative review protocol, which may incorporate third party data, information from Plaintiffs, and sampling procedures.

Before issuing their final report, the Co-Neutrals will: 1) provide the Parties no fewer than 15 Days to comment on a draft report, 2) confer with each party about the draft report, and 3) take into consideration each party's comments.

The baseline reports shall be made public on the Parties' websites.

3. Data: By May 1, 2021, and every twelve months thereafter, Defendants shall provide to Plaintiffs and the Co-Neutrals any data required to validate the Target Outcomes for the previous calendar year. For example, data covering the period from January 1, 2020 to December 31, 2020 shall be provided by May 1, 2021.

4. Annual Reports: By August 1, 2021, and every twelve months thereafter, Defendants shall provide to Plaintiffs and the Co-Neutrals a written report of their progress with respect to the Target Outcomes and Implementation Targets. The period of assessment for each annual report shall be the previous calendar year—for example, the report due by May 1, 2021 shall describe Defendants' performance from January 1, 2020 to December 31, 2020. Defendants' annual reports and any plans, reviews, or policies referenced therein shall be made public on the Parties' websites. These assessments are intended to be informational, and disagreements related to the content of these reports shall not proceed through the dispute resolution process in Section IX.

By November 15, 2021, and at least every twelve months thereafter, the Co-Neutrals shall provide a report to the Parties on Defendants' progress towards the Implementation Targets and Target Outcomes. The period of assessment for each annual report shall be the previous calendar year—for example, the report due by November 15, 2021 shall describe Defendants' performance from January 1, 2020 to December 31, 2020. The Co-Neutrals shall give the Parties no fewer than 15 Days to comment on a draft report, shall confer with each Party, and shall take the Parties' comments into consideration when finalizing their reports.

The Defendants' and Co-Neutrals' reports will assess Defendants' progress with respect to each Implementation Target and Target Outcome and will evaluate whether Defendants have met the Performance Standard with respect to any Implementation Target and Target Outcome for which the deadline is due or has passed. In making these assessments, Defendants and the Co-Neutrals shall consider evidence gathered pursuant to the Data Validation Plan and any qualitative review protocol, as well as data and information provided by the Parties, data and information available from third party sources, and other relevant factors. They shall also consider the Goals and the prefatory language in each Appendix. A lack of progress shown in data (or even negative data) as to any Implementation Target or Target Outcome does not require a finding that Defendants have not met the Performance Standard. If Defendants fail to provide accurate and verifiable data in a timely manner, the Co-Neutrals may find that they have not met the Performance Standard.

Defendants' and the Co-Neutrals' annual reports shall also discuss efforts by Defendants to achieve the designated Performance Standard for each Implementation Target and Target Outcome and any activities that Defendants and/or the Co-Neutrals have undertaken to meet their obligations under this Agreement during the previous year.

The Co-Neutrals' methods may include, but are not limited to, analyses of information collected by Defendants' management and information systems (if and when available and

accurate), reviews of case records, aggregation of data, and interviews with Defendants' personnel, contractors and their staff and/or consultants, service providers and their staff and/or consultants, Children in State Custody or formerly in state custody and their families, and other child welfare and behavioral health stakeholders. A Child in State Custody will only be interviewed if they affirmatively agree to be interviewed. The Co-Neutrals will provide reasonable notice of any planned interview with a Child in State Custody to the child's Guardian ad Litem or Youth Attorney. If the Guardian ad Litem or Youth Attorney believes that an interview will harm the Child in State Custody, the Guardian ad Litem or Youth Attorney will notify the Co-Neutrals and the interview will not proceed.

5. Monitoring: The Implementation Targets are steps that need not be monitored once they have been achieved. If the Co-Neutrals find that the Defendants have met the Performance Standard for a specific Implementation Target, that Implementation Target shall not be reassessed in further reports. If the Co-Neutrals find that the Defendants have not met the Performance Standard for a specific Implementation Target, the Implementation Target shall be reassessed every year thereafter until the Performance Standard is met.

Each Target Outcome shall be monitored until Defendants have met the Performance Standard for that Target Outcome continuously for a period of at least 24 months, as described in Section VIII.

6. Meetings: The Co-Neutrals shall preside over a meeting between the Parties at least twice a year. In 2020, the Parties and Co-Neutrals shall make every effort to hold these meetings in July and December. In all subsequent years, the Parties and Co-Neutrals shall make every effort to hold the first meeting no more than 30 Days after the release of Defendants' annual report and the second meeting no more than 30 Days after the release of the Co-Neutrals' annual report. The Parties may provide comments on Defendants' and/or the Co-Neutrals' reports to the Co-Neutrals and all other Parties in advance of each meeting.

VII. REQUESTS FOR AND ACCESS TO INFORMATION

Requests for Information: The Parties agree that in order to create the Data Validation Plan, to set a baseline for the Target Outcomes, and to evaluate progress toward achieving the Implementation Targets and Target Outcomes, the Co-Neutrals and their staff and/or consultants will require reasonable access to information.

Defendants will designate an employee to facilitate the Co-Neutrals' access to information, including access to Defendants' personnel. The employee will be accountable to both CYFD and HSD and will have expertise in the issues covered by this Agreement and its Appendices. The designated employee will provide the Co-Neutrals and their staff and/or consultants with access to all requested information, including confidential information, and will not have the authority to deny any Co-Neutral's request for information or access, or otherwise to restrict the Co-Neutrals' access to information. In addition to ensuring that the Co-Neutrals have remote electronic access to Defendants' data systems that collect or record information necessary to validate performance under this Agreement, Defendants will respond to any requests for additional information from the Co-Neutrals within 14 Days of the request unless the Co-

Neutrals agree to a different deadline. Plaintiffs may submit proposed written requests for information to the Co-Neutrals, who may in their discretion submit such requests to Defendants.

The Parties and Co-Neutrals will enter into a Protective Order to facilitate access to confidential information. In the event the Co-Neutrals seek the review of confidential information contained in the individual records of Proposed Class members not named as plaintiffs in this proceeding, Disability Rights New Mexico ("DRNM") and Native American Disability Law Center ("NADLC") may obtain those records and release them to counsel pursuant to their federal authority and with the consent of the individual or their guardian. Where DRNM and NADLC lack authority to obtain or release the record, the following procedures will apply:

a) Plaintiffs will obtain a release from the individual child if they are age 14 or older and from the child's parent/guardian if they are younger than 14. Plaintiffs may use the release to obtain the information sought directly.

b) If the name/contact information is not known to Plaintiffs but is known to Defendants, Defendants will provide that information so that Plaintiffs may obtain a release.

c) If there is no way to obtain a release or if Plaintiffs believe that effort will be futile and there is reasonable cause to believe that an individual child is not being appropriately served under this Agreement, Plaintiffs may seek an order from any court of competent jurisdiction requiring the release of confidential information from CYFD, HSD, and/or the provider of services. Under most circumstances, Defendants will take no position on the request or will stipulate to the order for the release of information so long as notice is provided to the individual child and legal guardian and they are given an opportunity to be heard, and so long as the requested order includes provisions adequate to protect the confidential information from unauthorized disclosure.

Access to Defendants' Personnel: As reasonably necessary to assess the implementation of this Agreement, the Co-Neutrals and their staff and/or consultants shall have the power to confer with and interview Defendants' personnel. The Co-Neutrals must direct any request to meet with Defendants' personnel to the employee designated to facilitate the Co-Neutrals' access to information in first instance. Plaintiffs and Defendants' Counsel shall receive reasonable notice of the dates and topics of such meetings and may propose that alternate or additional personnel provide information to the Co-Neutrals regarding the designated topics. The Co-Neutrals shall decide whether to confer with and interview the alternate or additional personnel proposed by the Parties. Neither Party shall send representatives to such meetings aside from the personnel to be interviewed. Defendants' personnel must participate in the meeting in good faith and Defendants shall not retaliate against any of their personnel who provide information to the Co-Neutrals or their designees. The Parties may propose to the Co-Neutrals the names or positions of any of Defendants' personnel that they believe should be interviewed about Defendants' progress towards meeting the Implementation Targets and Target Outcomes.

VIII. CERTIFICATION OF IMPLEMENTATION TARGETS AND TARGET OUTCOMES

When the Co-Neutrals certify that Defendants have met the Performance Standard for an Implementation Target, or have met the Performance Standard for a Target Outcome for a continuous period of no less than 24 months, they may certify that Defendants have done so and may declare that the Implementation Target or Target Outcome is no longer subject to monitoring in the Co-Neutrals' reports. Once an Implementation Target or Target Outcome is no longer subject to monitoring, it is severable from the rest of the Agreement for the purposes of determining expiration of the Agreement.

IX. DISPUTE RESOLUTION

A. Alternative Dispute Resolution and Arbitration. Any dispute arising out of or related to this Agreement shall be subject to the following process:

Step 1 – Alternative Dispute Resolution: At any time following the execution of this Agreement, any Party or Parties may notify the other Parties that they are initiating the alternative dispute resolution process by providing written notice of the issue in dispute, the initiating Party's position on that dispute, and their choice to initiate the dispute resolution process to all other Parties and to the Co-Neutrals. The Co-Neutrals shall attempt to resolve the dispute through mediation within 30 Days of the initiation of the dispute. The Parties shall use good-faith, best efforts to discuss and resolve the dispute.

For any dispute over whether the Defendants have met the Performance Standard for an Implementation Target or Target Outcome by the agreed-upon deadline, the Co-Neutrals and the Parties shall attempt to agree on a corrective action plan through mediation. No Party shall initiate the arbitration process in Step 2 until the time for Defendants to complete any corrective action plan has expired.

Step 2– Arbitration: After the Parties have completed the alternative dispute resolution process set forth in Step 1 and any time to resolve the disputed issue through a corrective action plan has elapsed, any Party may initiate binding arbitration. A Party may not initiate arbitration without having completed the alternative dispute resolution process set forth in Step 1. The Parties intend arbitration to be the exclusive means for resolving any disputes arising out of or related to this Agreement that cannot be resolved through the alternative dispute resolution process set forth in Step 1. To the maximum extent allowed by law, the Parties hereby voluntarily and knowingly waive their rights to bring a dispute arising out of or related to this Agreement in court.

1. Arbitration Procedure: A Party may initiate arbitration by providing written notice to the other Parties of their choice to do so no less than 14 Days from the completion of the mediation or the expiration of the corrective action plan, whichever is longer. The Parties appoint Hon. James Hall (Ret.) as the arbitrator for any disputes arising under this provision. In the event that Hon. James Hall is unavailable to serve in this role or becomes unable to serve in this role during the term of this Agreement, the Parties agree to appoint a new arbitrator to serve in his place.

a. Briefing: Within 14 Days of the initiating Party's provision of written notice, the Parties shall file simultaneous opening briefs. Within 14 Days of the filing of the opening briefs, the Parties shall file simultaneous rebuttal briefs. No reply briefs by any Party shall be permitted.

b. Hearing: Subject to the arbitrator's availability, the arbitrator will hold a hearing on the issues in dispute within 7 business days after the filing of rebuttal briefs. If the arbitrator is not available within 7 business days, then the hearing shall take place at the arbitrator's earliest convenience. The Co-Neutrals shall not be called as witnesses in the arbitration but their reports may be submitted as evidence.

c. Decision: The arbitrator shall render a reasoned decision within 14 Days after the hearing or at the arbitrator's earliest convenience thereafter. The arbitrator's decision shall be final and non-appealable except on grounds set forth in the AAA's Commercial Arbitration Procedures. The arbitrator shall have the authority to award any relief necessary to effectuate the purpose of this Agreement, including all types of relief, other than monetary damages, that a state or federal court in New Mexico could issue, such as specific performance, injunctive relief, declaratory relief, and reasonable non-monetary sanctions. If Plaintiffs are the prevailing party, the arbitrator, in his discretion, may allow Plaintiffs reasonable attorneys' fees and costs.

d. Post-Arbitration Relief: If the Party against whom the arbitrator rules fails to comply with the arbitrator's ruling in the time set forth in the arbitrator's decision, the prevailing party may confirm and enforce the arbitrator's award pursuant to N.M. Stat. Ann. § 44-7A-23.

e. Other Matters: The Parties' arbitration briefs, as well as the arbitrator's decision, shall be public. The arbitrator's fees shall be paid by Defendants.

X. DISMISSAL AND NON-RELEASED CLAIMS

A. Dismissal: Within 30 Days of the execution of this Agreement by the Parties, Plaintiffs shall promptly and voluntarily dismiss with prejudice all causes of action and claims alleged in the *Kevin S.* litigation.

B. No Release of Claims for Money Damages: Because the *Kevin S.* case was limited to claims for injunctive and declaratory relief and for recovery of attorneys' fees and costs, nothing in this Agreement shall be deemed a release, settlement, or waiver of claims by the Plaintiffs or members of the Proposed Class for money damages against Defendants.

C. No Release of Future Claims: Nothing in this Agreement shall be deemed a release, settlement, or waiver of claims by the named Plaintiffs or members of the Proposed Class related to or arising out of acts or omissions by Defendants after the Effective Date of this Agreement.

D. No Limitation on DRNM and NADLC's Duties Under Federal Law: Nothing in this Agreement shall be deemed to limit DRNM and NADLC's ability to fulfill their duties or roles under the Protection and Advocacy for Individuals with Mental Illness ("PAIMI") Act, 42

U.S.C. § 10801, et. seq., and the regulations promulgated thereto, 42 C.F.R. § 51, et seq., and the Developmental Disabilities Assistance and Bill of Rights ("DD") Act, 42 U.S.C. § 15041, et seq., and the regulations promulgated thereto, 45 C.F.R. § 1386 et seq.

XI. ATTORNEYS' FEES AND COSTS

Within 90 Days of the Effective Date of this Agreement, Defendants shall pay $2,400,000 in Plaintiffs' attorneys' fees and costs in consideration for Plaintiffs' role in initiating the *Kevin S.* litigation and implementing this Agreement. Plaintiffs may also receive attorneys' fees and costs in connection with arbitration proceedings, as described in Section IX. Defendants shall be responsible for the payment of their own attorneys' fees and costs incurred in the litigation and negotiation of this Agreement.

XII. OTHER PROVISIONS

A. Choice of Law: This Agreement shall be interpreted under the laws of the State of New Mexico without regard to that State's choice of law principles.

B. Authority to Execute: The signatories to this Agreement represent and warrant that they have the full authority to execute this Agreement on behalf of, and to bind, any person whom they represent.

C. Notice: Any notice to the Parties required or provided for under this Agreement shall be given by emailing notice to the following:

For Plaintiffs:

Tara Ford – taraford@law.stanford.edu

Kathryn Eidmann – keidmann@publiccounsel.org

Grant Davis-Denny – Grant.Davis-Denny@mto.com

Jesselyn Friley – jfriley@publiccounsel.org

For Defendants:

Eli Fresquez – Eli.Fresquez@state.nm.us

James Cowan – James.Cowan@state.nm.us

Paul Ritzma – Paul.Ritzma@state.nm.us

Lisa Hahn-Cordes – Lisa.Hahn-Cordes@state.nm.us

D. Counterparts and Delivery: The Agreement may be signed in any number of counterparts, all of which together shall constitute one and the same instrument. The Agreement may be executed and delivered by transmission in PDF or similar electronic document format.

E. Successors: The Agreement shall be binding on, apply to, and inure to the benefit of the Parties and their successors, including any public official subsequently appointed to serve in

either of Defendants' official roles or an official role that has substantially similar responsibilities with respect to the subject matter of the *Kevin S.* Litigation.

F. Further Assurances: The Parties shall take such further and other steps and execute such further and other documents, including but not limited to agreements with the Co-Neutrals, as may reasonably be required to give effect to the terms of the Agreement.

G. HSD and CYFD Obligations: This Agreement specifies actions to be taken by HSD and CYFD, including obligations to collaborate as set forth in the Agreement and its Appendices. Nothing in this Agreement shall be read to place additional obligations on HSD or CYFD beyond what is set forth in this Agreement and its Appendices or otherwise required by state and/or federal law.

H. Entire Agreement: The Agreement contains the entire agreement among the Parties relating to the subject matter hereof and supersedes and replaces any and all prior negotiations, understandings, promises, representations, inducements, and discussions, whether written or oral. The Agreement may not be changed or modified except in a writing signed by all Parties hereto.

I. No Party Considered Drafter: None of the Parties shall be considered the drafter of the Agreement, or any provisions of the Agreement, for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

J. Named Plaintiffs: Each named Plaintiff will be offered an assessment for community-based behavioral health services within 60 Days of the signing of this Agreement to determine their current need for intensive home- and community-based behavioral health services. Defendants will make available any medically necessary services to each named Plaintiff immediately where possible and no later than 30 Days after the assessment otherwise. If community-based behavioral health services are not medically necessary for any named Plaintiff who is in an out-of-home placement, Defendants will meet on a monthly basis to develop a plan that will enable the named Plaintiff to be placed in a family setting as soon as medically appropriate. Defendants will routinely update the Co-Neutrals on their efforts to serve the named plaintiffs.

Dated:

Plaintiffs

KEVIN S., THROUGH HIS NEXT FRIEND BETTE FLEISHMAN, *Plaintiff*

By: _____

CHRIS W., THROUGH HIS NEXT FRIEND BETTE FLEISHMAN, *Plaintiff*

By: _____

JENNIFER H., THROUGH HER NEXT FRIEND LIZ MCGRATH, *Plaintiff*

By: _____

DIANA D., THROUGH HER NEXT FRIEND ERNESTINA R. CRUZ, *Plaintiff*

By: _____

BRIAN J., THROUGH HIS NEXT FRIEND MATTHEW BERNSTEIN, *Plaintiff*

By: _____

ELLIOT J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: _____

MICHAEL J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: _____

OLIVIA L., THROUGH HER NEXT FRIEND GEORGIA BERRENBERG, *Plaintiff*

By: _____

MATTY B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

JUSTIN B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

CHRIS W., THROUGH HIS NEXT FRIEND BETTE FLEISHMAN, *Plaintiff*

By: _____

JENNIFER H., THROUGH HER NEXT FRIEND LIZ MCGRATH, *Plaintiff*

By: Elizabeth McGrath

DIANA D., THROUGH HER NEXT FRIEND ERNESTINA R. CRUZ, *Plaintiff*

By: _____

BRIAN J., THROUGH HIS NEXT FRIEND MATTHEW BERNSTEIN, *Plaintiff*

By: _____

ELLIOT J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: _____

MICHAEL J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: _____

OLIVIA L., THROUGH HER NEXT FRIEND GEORGIA BERRENBERG, *Plaintiff*

By: _____

MATTY B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

JUSTIN B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

CHRIS W., THROUGH HIS NEXT FRIEND BETTE FLEISHMAN, *Plaintiff*

By: _____

JENNIFER H., THROUGH HER NEXT FRIEND LIZ MCGRATH, *Plaintiff*

By: _____

DIANA D., THROUGH HER NEXT FRIEND ERNESTINA R. CRUZ, *Plaintiff*

By: _____

BRIAN J., THROUGH HIS NEXT FRIEND MATTHEW BERNSTEIN, *Plaintiff*

By: _____

ELLIOT J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: _____

MICHAEL J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: _____

OLIVIA L., THROUGH HER NEXT FRIEND GEORGIA BERRENBERG, *Plaintiff*

By: _____

MATTY B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

JUSTIN B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

CHRIS W., THROUGH HIS NEXT FRIEND BETTE FLEISHMAN, *Plaintiff*

By: _____

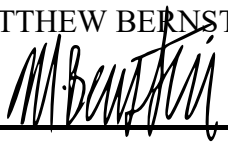
JENNIFER H., THROUGH HER NEXT FRIEND LIZ MCGRATH, *Plaintiff*

By: _____

DIANA D., THROUGH HER NEXT FRIEND ERNESTINA R. CRUZ, *Plaintiff*

By: _____

BRIAN J., THROUGH HIS NEXT FRIEND MATTHEW BERNSTEIN, *Plaintiff*

By: 

ELLIOT J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: _____

MICHAEL J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: _____

OLIVIA L., THROUGH HER NEXT FRIEND GEORGIA BERRENBERG, *Plaintiff*

By: _____

MATTY B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

JUSTIN B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

CHRIS W., THROUGH HIS NEXT FRIEND BETTE FLEISHMAN, *Plaintiff*

By: _____

JENNIFER H., THROUGH HER NEXT FRIEND LIZ MCGRATH, *Plaintiff*

By: _____

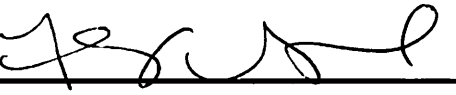
DIANA D., THROUGH HER NEXT FRIEND ERNESTINA R. CRUZ, *Plaintiff*

By: _____

BRIAN J., THROUGH HIS NEXT FRIEND MATTHEW BERNSTEIN, *Plaintiff*

By: _____

ELLIOT J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: 

MICHAEL J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: 

OLIVIA L., THROUGH HER NEXT FRIEND GEORGIA BERRENBERG, *Plaintiff*

By: _____

MATTY B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

JUSTIN B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

CHRIS W., THROUGH HIS NEXT FRIEND BETTE FLEISHMAN, *Plaintiff*

By: _____

JENNIFER H., THROUGH HER NEXT FRIEND LIZ MCGRATH, *Plaintiff*

By: _____

DIANA D., THROUGH HER NEXT FRIEND ERNESTINA R. CRUZ, *Plaintiff*

By: _____

BRIAN J., THROUGH HIS NEXT FRIEND MATTHEW BERNSTEIN, *Plaintiff*

By: _____

ELLIOT J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

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MICHAEL J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

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OLIVIA L., THROUGH HER NEXT FRIEND GEORGIA BERRENBERG, *Plaintiff*

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MATTY B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

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JUSTIN B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

CHRIS W., THROUGH HIS NEXT FRIEND BETTE FLEISHMAN, *Plaintiff*

By: _____

JENNIFER H., THROUGH HER NEXT FRIEND LIZ MCGRATH, *Plaintiff*

By: _____

DIANA D., THROUGH HER NEXT FRIEND ERNESTINA R. CRUZ, *Plaintiff*

By: _____

BRIAN J., THROUGH HIS NEXT FRIEND MATTHEW BERNSTEIN, *Plaintiff*

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ELLIOT J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: _____

MICHAEL J., THROUGH HIS NEXT FRIEND FELIZ RAEL, *Plaintiff*

By: _____

OLIVIA L., THROUGH HER NEXT FRIEND GEORGIA BERRENBERG, *Plaintiff*

By: _____

MATTY B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

JUSTIN B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

JACKSON B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By: _____

LUCAS M., THROUGH HIS NEXT FRIEND MARIEL WILLOW, *Plaintiff*

By: _____

JULIAN M., THROUGH HIS NEXT FRIEND MARIEL WILLOW, *Plaintiff*

By: _____

DAVID G., THROUGH HIS NEXT FRIEND HEIDI TODACHEENE, *Plaintiff*

By: _____

DISABILITY RIGHTS NEW MEXICO, *Plaintiff*

By: _____

NATIVE AMERICAN DISABILITY LAW CENTER, *Plaintiff*

By: _____

JACKSON B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By:

LUCAS M., THROUGH HIS NEXT FRIEND MARIEL WILLOW, *Plaintiff*

By: 

JULIAN M., THROUGH HIS NEXT FRIEND MARIEL WILLOW, *Plaintiff*

By: 

DAVID G., THROUGH HIS NEXT FRIEND HEIDI TODACHEENE, *Plaintiff*

By:

DISABILITY RIGHTS NEW MEXICO, *Plaintiff*

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NATIVE AMERICAN DISABILITY LAW CENTER, *Plaintiff*

By:

JACKSON B., THROUGH HIS NEXT FRIEND
GABRIELLE VALDEZ, *Plaintiff*

By:

_____

LUCAS M., THROUGH HIS NEXT FRIEND
MARIEL WILLOW, *Plaintiff*

By:

_____

JULIAN M., THROUGH HIS NEXT FRIEND
MARIEL WILLOW, *Plaintiff*

By:

_____

DAVID G., THROUGH HIS NEXT FRIEND
~~HEIDI TODACHEENE~~, *Plaintiff* Ashley S. MacKenzie

By:

_____

DISABILITY RIGHTS NEW MEXICO, *Plaintiff*

By:

_____

NATIVE AMERICAN DISABILITY LAW
CENTER, *Plaintiff*

By:

_____

JACKSON B., THROUGH HIS NEXT FRIEND GABRIELLE VALDEZ, *Plaintiff*

By:

LUCAS M., THROUGH HIS NEXT FRIEND MARIEL WILLOW, *Plaintiff*

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DISABILITY RIGHTS NEW MEXICO, *Plaintiff*

By: _____

NATIVE AMERICAN DISABILITY LAW CENTER, *Plaintiff*

By: _____

Defendants

BRIAN BLALOCK, Secretary for CYFD, *Defendant*

By:

DAVID SCRASE, Secretary for HSD, *Defendant*

By:

Plaintiffs' Counsel

PUBLIC COUNSEL

By: Kathryn Sidman 3/6/20

MUNGER, TOLLES & OLSON LLP

By:

DISABILITY RIGHTS NEW MEXICO

By:

FREEDMAN BOYD HOLLANDER GOLDBERG URIAS & WARD, P.A.

By:

STANFORD LAW SCHOOL MILLS LEGAL CLINIC, YOUTH AND EDUCATION LAW PROJECT

By:

MARTINEZ, HART, THOMPSON & SANCHEZ, P.C.

By:

Defendants

BRIAN BLALOCK, Secretary for CYFD, *Defendant*

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Defendants

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DAVID SCRASE, Secretary for HSD, *Defendant*

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Plaintiffs' Counsel

PUBLIC COUNSEL

By:

MUNGER TOLLES & OLSON LLP

By:

FREEMAN BOYD HOLLANDER GOLDBERG URIAS & WARD, P.A.

By:

STANFORD LAW SCHOOL MILLS LEGAL CLINIC, YOUTH AND EDUCATION LAW PROJECT

By:

MARTINEZ, HART, THOMPSON & SANCHEZ, P.C.

By:

THE LAW FIRM OF ALEXANDER D. CRECCA, PC

By:

THE LAW FIRM OF ALEXANDER D. CRECCA, PC

By: _____

THE LAW OFFICE OF RYAN J. VILLA

By: _____

RODEY LAW FIRM

By: _____

Defendants' Counsel

KELEHER AND MCLEOD PA

By: _____

THE LAW FIRM OF ALEXANDER D. CRECCA, PC

By:

THE LAW OFFICE OF RYAN J. VILLA

By: Kelly K. Waterfall

RODEY LAW FIRM

By:

Defendants' Counsel

KELEHER AND MCLEOD PA

By:

THE LAW FIRM OF ALEXANDER D. CRECCA, PC

By:

THE LAW OFFICE OF RYAN J. VILLA

By:

RODEY LAW FIRM

By: Andrew G. Schultz

Defendants' Counsel

KELEHER AND MCLEOD PA

By:

Defendants

BRIAN BLALOCK, Secretary for CYFD, *Defendant*

By: _____

DAVID SCRASE, Secretary for HSD, *Defendant*

By: _____

Plaintiffs' Counsel

PUBLIC COUNSEL

By: _____

MUNGER, TOLLES & OLSON LLP

By: _____

DISABILITY RIGHTS NEW MEXICO

By: _____

FREEDMAN BOYD HOLLANDER GOLDBERG URIAS & WARD, P.A.

By: _____

STANFORD LAW SCHOOL MILLS LEGAL CLINIC, YOUTH AND EDUCATION LAW PROJECT

By: _____

MARTINEZ, HART, THOMPSON & SANCHEZ, P.C.

By: _____

THE LAW FIRM OF ALEXANDER D. CRECCA, PC

By: _____

THE LAW OFFICE OF RYAN J. VILLA

By: _____

RODEY LAW FIRM

By: _____

Defendants' Counsel

KELEHER AND MCLEOD PA

By: _____

Sean Olivas
Gary Van Luchene

4822-2530-1687, v. 1

APPENDIX A: TRAUMA-RESPONSIVE SYSTEM OF CARE

When assessing CYFD's and HSD's efforts to implement the commitments in this Appendix, the Co-Neutrals will consider, in addition to other data and information, the extent to which CYFD and HSD build and support a trauma-responsive system of care for all Children in State Custody. A trauma-responsive system of care is one that identifies, recognizes, understands the effects of, and provides sufficient services and supports to ameliorate trauma, including secondary trauma. A trauma-responsive system of care must also support and serve other stakeholders, including families and persons who work for or on behalf of children, youth, and families. A trauma-responsive system includes culturally appropriate services and supports. A trauma-responsive system of care should utilize collaborative decision-making to identify strengths and needs and to develop an individualized plan for the child. Children should have a voice in decisions about where and with whom they should live and what services they should receive, and these decisions should occur in a timely manner. Accurate, complete, and relevant evidence-based quality management tools and measures are necessary for the State to implement and refine a trauma-responsive system of care. The Co-Neutrals will assess whether Defendants have met the Performance Standard with respect to the commitments in this Appendix.

IMPLEMENTATION TARGETS

By December 1, 2020, CYFD and HSD will take the following specific steps necessary to create an effective trauma-responsive system of care for Children in State Custody.

1. CYFD, with input and collaboration from HSD, will establish Child and Adolescent Needs and Strengths ("CANS") and functional trauma assessment criteria for access to intensive home-based services in consultation with clinical experts agreed upon by Defendants and Plaintiffs. The criteria will aim to help CYFD, stakeholders, and providers identify children and youth for whom intensive home-based services are medically necessary and will include but not be limited to consideration of Serious Emotional Disturbance ("SED") criteria, CANS, and functional trauma assessment screening. CYFD and HSD will revise SED criteria to clarify that removal from home is not a requirement to access these services.

2. Trauma-Responsive Training and Coaching Plan. CYFD and HSD will create a cross-departmental Trauma-Responsive Training and Coaching Plan that describes in writing a plan and process for providing mandatory, high-quality trauma-responsive training to all CYFD employees, Designated HSD Employees[1] and employees of child-serving agencies that contract with CYFD or HSD to provide care to Children in State Custody. Training will address the impact of trauma including its neurodevelopmental effects, implementing and accessing trauma-responsive supports and services, and secondary trauma. Training will

[1] "Designated HSD Employees" refers to (1) Social and Community Services Coordinators, their supervisors and managers, including the Behavioral Health Services Division Director; and (2) any HSD employee or their designee involved in care coordination activities, EPSDT services, or determinations about service utilization for Children in State Custody, including supervisory and management level employees.

comply with professional standards and best practices in adult education, including by being case-based and interactive, and including an assessment component to measure effectiveness. Trauma-responsive training will consist of initial or pre-service training as well as consistent, ongoing in-service training, mentoring, coaching, and support. The Trauma-Responsive Training and Coaching Plan will also provide for mandatory trauma-responsive training for Resource Families and optional trauma-responsive training for Respondents. Training for Resource Families and Respondents will be accessible both online and in person, and CYFD will provide childcare during any in-person sessions if needed. Notice of training shall be provided to Resource Families and Respondents reasonably in advance of any scheduled training, and no less than 14 Days in advance of any scheduled training. Notices will state that childcare will be provided and that requests for childcare must be received 48 hours prior to the training, or a lesser number of hours determined by CYFD and/or HSD. The written plan will include identification of the training program or materials to be used and the number of hours of training to be received by each category of trainee. The trauma-responsive training and coaching described in the plan must be sufficient to allow the Departments to meet their obligations under this Agreement. The Co-Neutrals must approve the Trauma-Responsive Training and Coaching Plan.

TARGET OUTCOMES

1. **Screening.** By December 1, 2021, every Child in State Custody will receive the screenings indicated below. CYFD and HSD will identify, and Co-Neutrals must approve, the form of the Child and Adolescent Needs and Strengths Crisis Assessment Tool ("CANS-CAT") and comprehensive CANS screening tools to be used. CYFD will ensure that every Child in State Custody receives the indicated screenings and will provide the results of the indicated screenings to HSD (through its MCOs and/or their successors). HSD will ensure that MCOs and/or their successors have capacity to provide indicated screenings.
    a. Results of initial screening using the CANS-CAT will be filed with the court no less than 24 hours before the child's 10-day hearing. If this deadline falls on a weekend or holiday, the screening results must be filed no less than one business day prior to the 10-day hearing.
    b. Comprehensive screening using a CANS-Trauma Comprehensive instrument or a comprehensive CANS assessment instrument with a trauma module will be conducted within 45 Days of removal from the home. Any child discharged from CYFD's legal custody before these screenings are conducted will be provided a referral for the screenings.
    c. Follow up screening indicated by the CANS-CAT, CANS, and/or any other information available to CYFD or HSD, including screening for intellectual and developmental disabilities and/or sexual exploitation, will be conducted immediately where possible and within 10 Days of indication otherwise. Any child discharged from CYFD's legal custody before these screenings are conducted will be provided a referral for them.

2. **Services.** By December 1, 2022, every Child in State Custody will receive age-appropriate trauma-responsive services, supports, and/or treatment to meet his or her individualized needs indicated by the CANS and functional trauma assessments, beginning immediately where possible and not to exceed 10 Days after the date of the screening and/or assessment.

HSD and CYFD will work with MCOs and other entities designated to provide care coordination to make sure medically necessary services are provided, documented in the child's file, and analyzed when developing plans for future care and services. HSD and CYFD will expand and offer community-based, evidence-based, well-supported, and promising trauma-responsive services, which include mobile crisis response services, intensive case management, intensive home-based services, and trauma-based therapies including Dialectical Behavior Therapy (DBT), Multi-Systemic Therapy (MST), trauma-informed Cognitive Behavioral Therapy (CBT), Functional Family Training (FFT), and Eye Movement Desensitization and Reprocessing therapy (EMDR). These services will be available to all Children in State Custody for whom the services are medically necessary and will be available immediately where possible and within 10 Days of the determination of medical necessity otherwise.

3. **Training**
    a. By December 1, 2021, all CYFD employees, designated HSD employees, employees of child serving agencies that contract with CYFD or HSD to provide care to Children in State Custody, and Resource Families will receive the training identified in the Trauma-Responsive Training and Coaching Plan. All Respondents will be offered the trauma training identified in the Trauma-Responsive Training and Coaching Plan.
    b. By December 1, 2021, all CYFD employees, designated HSD employees, and employees of child serving agencies that contract with CYFD or HSD who provide care to Children in State Custody will demonstrate through competency assessments and self-reporting that they have received adequate trauma-responsive training.

4. **Individualized Planning Meetings.** Subject to the approval of the Co-Neutrals, CYFD and HSD will develop and implement a process (the Individualized Planning Meeting Plan) for convening an Individualized Planning Meeting team for making decisions and for delivering services and supports for each Child in State Custody. The Individualized Planning Meeting process shall be informed by Child and Family Teaming (CFT), collaborative decision-making, and High Fidelity Wraparound models, and shall prioritize the child's voice and choice. The process shall also be strengths-based, connected to natural supports, and respectful of the child's family and unique cultural heritage. The Co-Neutrals shall not withhold approval of the Individualized Planning Meeting Plan if it is reasonably calculated to achieve the Goals of this Agreement. The Individualized Planning Meeting Plan will be completed and approved by December 1, 2020, and fully implemented by December 1, 2022.

5. **Quality Assurance, Improvement, and Evaluation.** CYFD and HSD will create and implement a Quality Assurance, Improvement, and Evaluation Plan, including quality management tools and measures to be used for reporting on CYFD and HSD's capacity to meet the needs of Children in State Custody, including measures for reporting on providing and improving quality of care, collaborating across Departments, and for providing transparency and accountability. The Plan will include: consistent definitions and terms across CYFD and HSD, data exchange and matching across CYFD and HSD, clarification of existing measures and indicators, self-assessments, metrics as indicators of system performance (including process indicators, client outcomes, and system impact), a continuous quality improvement process that provides information in real time to decision-makers, and a process for responding to findings from the Plan. CYFD will develop a meaningful quality assurance process to ensure

that training, policy, and procedure is being properly utilized and integrated into daily processes. The Co-Neutrals must approve the Quality Assurance, Improvement, and Evaluation Plan. CYFD and HSD will develop the Quality Assurance, Improvement, and Evaluation Plan by December 1, 2020 and fully implement it by December 1, 2021.

APPENDIX B: LEAST RESTRICTIVE AND APPROPRIATE PLACEMENTS

When assessing CYFD's and HSD's efforts to implement the commitments in this Appendix, the Co-Neutrals will consider, in addition to other data and information, the extent to which CYFD and HSD build a system for placing children in out-of-home care in stable, safe, appropriate, community-based placements in the least-restrictive environment. Children in out-of-home care should have caregivers who understand their strengths and needs and are able to support them to grow and heal. Children in out-of-home placements should be in the least restrictive, most connected, most family-like setting appropriate for their unique needs. Children aged 14 and older should be consulted on their express placement preferences. Children in out-of-home placements should have stable placements that meet their needs and should be protected from the harm caused by multiple placement moves. Foster care should be as temporary an arrangement as possible, with its goal being to provide children in out-of-home placements a safe, nurturing, and permanent home quickly. The Co-Neutrals will assess whether Defendants have met the Performance Standard with respect to the commitments in this Appendix.

IMPLEMENTATION TARGETS

By December 1, 2020, HSD and CYFD will take the following specific steps:

1. CYFD and HSD will develop a plan to (1) increase recruitment and retention of culturally reflective, community-based placements, with a focus on maximizing family supports and serving rural areas and difficult-to-place populations and (2) ensure that children in out-of-home care remain in stable placement and educational settings to the maximum extent feasible and that any change in placement is made in the best interests of the child and consistent with achieving the child's permanency goals.

2. CYFD will publish guidance prohibiting retaliation against any person, including foster parents, for raising concerns related to the unmet needs of Children in State Custody or their caregivers.

3. CYFD and HSD will develop and promote a warm line for Resource Families and Respondents who need assistance meeting the behavioral needs of the children in their care. CYFD will promote its internal Grievance Procedure for youth. CYFD will also develop a Grievance Procedure for Resource Families.

TARGET OUTCOMES

1. By December 1, 2020, no child under 18 will be placed in any hotel, motel, out-of-state provider, office of a contractor, or state agency office unless in extraordinary circumstances necessary to protect the safety and security of the child as documented in the child's record and approved by the Secretary or the Protective Services Director of CYFD. In any such

extraordinary circumstance, CYFD shall provide notice to the child's Guardian ad Litem and Youth Attorney immediately where possible, and not more than 24 hours after the placement of the child. Notification to the dependency court to which the child's case is assigned must occur within 3 business days. When a child is placed with an out-of-state provider, notice to the child's Guardian ad Litem, Youth Attorney, and the dependency court to which the child's case is assigned will be given prior to the move, pursuant to statute.

2. By December 1, 2020, HSD and CYFD will conduct a joint clinical review of any out-of-state placement, where the child's out-of-state placement is not the child's permanency plan, at least on a monthly basis. A CYFD caseworker known to the child will conduct in-person visits every month. Within the first 30 Days of the placement, the out-of-state Individualized Planning Meeting team will develop a discharge plan which includes identification of in-state resources that need to be developed for the child to return to New Mexico. The CYFD caseworker will do so by working with HSD or its designee to secure services that could be funded by Medicaid. Individualized Planning Meetings, which may take place during scheduled treatment team meetings for children in residential care, will be held every 30 Days to support the child and identify steps necessary to promote discharge.

3. By December 1, 2021, for any child placed in a congregate care setting due to a medical necessity determination that the child requires residential treatment, the finding of medical necessity will be clinically reviewed every 30 Days, or more frequently as needed. The finding of medical necessity must take into consideration whether community-based mental health services have been or could be provided. Individualized Planning Meetings will be held every 30 Days to support the child and identify steps necessary to promote discharge.

4. By December 1, 2021, any placement in a congregate care setting that is not supported by a determination of medical necessity, including placement in specialized group homes such as Transitional Living Placements, Maternity Group Homes, or settings for Commercial Sexual Exploitation of Children, must be supported by a determination of the Individualized Planning Meeting team, including a mental health professional, that it is in the best interests of the child. The best interest determination will be reviewed by the Individualized Planning Meeting team, including a mental health professional, every 90 Days, or more frequently as needed. If extraordinary circumstances require placement of a child in a shelter, CYFD will conduct an Individualized Planning Team meeting within 48 hours to identify an appropriate placement to which to move the child and any medically necessary services needed by the child, and will notify the child's legal representative of the result of the review.

5. By December 1, 2021, every child in out-of-home care will be in a licensed foster home placement unless a current finding of medical necessity requires otherwise or an Individualized Planning Meeting team determines that a non-clinical setting is in the child's best interest. The finding of medical necessity for a more restrictive setting (residential treatment or Qualified Residential Treatment Programs) will be reviewed every 30 Days or more frequently as needed and will take into consideration whether community-based mental health services and supports have been or could be provided.

6. Beginning on December 1, 2020, and on an annual basis by December 31 each year thereafter, the Co-Neutrals will approve a Target Outcome for CYFD to approve a specified number of new culturally reflective foster homes during the following year, and for HSD to approve a specified number of new treatment foster care placements during the following year.

7. By December 1, 2022, at least 40% of children in out-of-home care will be placed with kin. CYFD will use Seneca Family Finding software to attempt to identify and locate family members for every Child in State Custody within 48 hours of entering state custody.

8. By December 1, 2022, for children under 18 in out-of-home care, the rate of moves from a placement setting shall not exceed 3 moves per 1,000 Days in care. The educational consequences of a change in placement must be considered in all placement change determinations and must be discussed at Individualized Planning Meetings. Any change in placement that impacts the child's education must be accompanied by a written plan to ensure continuity in the child's education, including transportation and educational supports to minimize the impact of the transition.

9. Of all children in care for 12-23 months at the start of a 12-month period, 40% will achieve permanency (reunification, adoption, or permanent guardianship) within 12 months of the start of that period by December 2023.

10. **CYFD Workforce Development Plan.** CYFD will create a CYFD Workforce Development Plan that will ensure CYFD's workforce has adequate qualifications, expertise, skills, and numbers of personnel. The CYFD Workforce Development Plan will describe in writing the expected nature, scope, capacity, and structure of the workforce necessary to meet the obligations described in this Agreement. The plan will include a specific hiring plan that identifies, by county, the number of staff, credentials, and training required to meet the objectives identified in the CYFD Workforce Development Plan and outlines strategies to recruit and retain staff. The Plan will require that all caseworkers and supervisors have sufficient educational credentials and/or directly relevant experience. It will require that CYFD have a sufficient number of caseworkers to ensure that no caseworker will carry a case load of greater than the current professional standard identified by the Child Welfare League of America (CWLA). It will also include sufficient numbers of staff trained and able to implement ICWA guidelines using culturally responsive practices. The Plan will describe specific strategies to attract and retain diverse, high-quality staff with appropriate qualifications and skills. Co-Neutrals must approve the CYFD Workforce Development Plan. CYFD will develop the Workforce Development Plan by December 1, 2020 and fully implement it by December 1, 2021.

APPENDIX C: INDIAN CHILD WELFARE ACT

When assessing CYFD's and HSD's efforts to implement the commitments in this Appendix, the Co-Neutrals will consider, in addition to other data and information, the extent to which CYFD and HSD serve Native American families, build a relationship with each of the New Mexico Tribes and Pueblos, and comply with the Indian Child Welfare Act (ICWA) in its letter and intent. The State has an obligation to comply with ICWA and shall make every effort to ensure that all Native Children and families receive appropriate support and services. The Co-Neutrals will assess whether Defendants have met the Performance Standard with respect to the commitments in this Appendix.

IMPLEMENTATION TARGETS

By December 1, 2020, HSD and CYFD will take the following specific steps necessary to create a culturally responsive system of support for Native Children in State Custody:

1. CYFD and HSD will work with the Administrative Office of the Courts (AOC) and with New Mexico Tribes and Pueblos to draft a State ICWA law that mirrors and expands upon the federal version. The drafting committee will include representatives of New Mexico Tribes and Pueblos, representatives of Native Children, Native parents, and other caregivers involved in the child welfare system, experts on the federal ICWA, and providers of culturally relevant services and supports. The drafting committee will have discretion to determine the content of the law and will consider definitions of "active efforts," "qualified expert witness," including qualifications of for determining a "qualified expert witness," and development of a pool of potential expert witnesses. HSD and CYFD will identify and arrange for an appropriate facilitator such as the New Mexico Department of Indian Affairs to convene the drafting committee to assist in drafting the law. CYFD and HSD will actively promote passage of the law, including by making a positive recommendation of the bill to the Governor's Office with appropriate justification.

2. With the input of New Mexico's Tribes and Pueblos, CYFD and HSD will develop processes and procedures to promote traditional interventions as first-line interventions and services, using an assessment tool for Native Children in State Custody, modifications of existing assessment tools, or other means recommended by Native experts. The form of the assessment tool or other means shall be approved by the Co-Neutrals, but the Co-Neutrals shall not withhold approval of the assessment tool if it is reasonably calculated to achieve the Goals of this Agreement.

3. HSD and CYFD will pursue federal funding to the maximum extent allowable through Medicaid and IV-E funding for traditional and culturally responsive treatments, interventions, and supports, including non-medicalized interventions, for Native Children in State Custody.

4. CYFD will maintain a full-time employee responsible for developing and maximizing culturally responsive services for Native Children in State Custody and for coordinating and overseeing provision of culturally responsive services to Native Children in State Custody by local staff throughout the state.

5. CYFD will develop a plan to increase recruitment and retention of Native Resource Families. The plan will include identifying relatives of Native Children, as required by ICWA or the New Mexico Tribe or Pueblo's preferred placement priorities, as well as identifying other potential Native Resource Families. The plan will include identification of additional supports needed for Native Resource Families, including supports and services that are culturally responsive and are not the same as those provided to non-Native parents, as well as providing assistance for families to navigate Resource Family licensing requirements. One methodology for identifying additional needed supports will be surveying former Native Resource Families to determine why they have stopped serving as a Resource Family and surveying potential Native Resource Families that did not complete the process to determine why they chose not to become a Resource Family.

6. CYFD will work with New Mexico Tribes and Pueblos to engage in dialogue, develop agreements, and take any other steps necessary to help New Mexico Tribes and Pueblos better access IV-E funding to improve services for Native Children, including additional funding for legal representation for New Mexico Tribes and Pueblos and Respondents.

7. CYFD and HSD will collect and analyze data sufficient to understand the characteristics and needs of Native Children in State Custody and the capabilities of the State to meet those needs. The data to be collected will include (1) data about Native Children in State Custody, including tribal membership status, confirmation and correction of birth certificates, removal rates, and placements (including whether children are placed with relative, non-relative Native, or non-relative non-Native Resource Families, Treatment Foster Care, congregate care, residential placement, or other out of home placement); (2) data on the demographics and characteristics of placements available to Native children (including Resource Families); and (3) data on the demographics, characteristics and services provided by treatment providers available to Native Children in State Custody.

8. CYFD and HSD will create and maintain a dedicated ICWA unit in the 2nd Judicial District that includes dedicated and specially trained caseworkers, supervisors, and children's court attorneys who will specialize in ICWA and act as consultants and trainers on ICWA cases. CYFD will work with the AOC to implement lessons learned from the ICWA unit and court in the 2nd Judicial District throughout the State.

TARGET OUTCOMES

1. By December 1, 2021, assessments using the tool developed for Native Children in State Custody or other process developed per Implementation Target 2 above will be conducted within 30 Days of CYFD filing a petition for custody of a Native Child in State Custody.

2. CYFD will work with New Mexico Tribes and Pueblos, families, and Native Children to identify culturally responsive services. HSD will develop and expand access to traditional

and culturally responsive treatments, interventions, and supports. CYFD will develop and arrange for traditional and culturally competent interventions, which may include interventions that are not medicalized and/or have not been evaluated as evidence-based, well-supported, or promising. CYFD and HSD will expand culturally relevant services that can be used as an active effort to keep families intact and to avoid taking children into custody.

a. By December 1, 2022, Individualized Planning Meetings for every Native Child in State Custody will address the need for traditional or culturally responsive services, supports, or interventions, including non-medicalized interventions, to meet his or her individualized needs as indicated by his or her assessments.
b. While a family can decline CYFD's assistance, CYFD recognizes that it has the responsibility to coordinate services and ensure they are provided;
c. When appropriate traditional or culturally responsive services, supports or interventions, including non-medicalized interventions, are identified, they will be provided immediately where possible and not to exceed 10 Days after the date of identifying the need, unless a longer period is necessary due to cultural traditions, norms, or factors outside of CYFD's control.
d. If there is a basis for delaying the intervention as outlined under subpart c above, then it will be identified and communicated in writing to the Individualized Planning team and reviewed at subsequent meetings.
e. If the intervention requires involvement from the tribe or tribal community, CYFD will identify the nature of the community's involvement and the reason for any delay in provision of the intervention, if any, for the Individualized Planning team and it will be reviewed at subsequent meetings.

CYFD will make every effort to ensure that services are provided as quickly as possible with consideration of the traditions and culture of the Native Child's tribe or pueblo, as well as child and family preferences.

By December 1, 2020, CYFD will develop policies to ensure that Native Children in State Custody receive traditional or culturally responsive services, supports, or interventions, including interventions which are non-medicalized and/or have not been evaluated as evidence-based, well-supported, or promising, including collecting data on the implementation of the protocols. The Co-Neutrals will approve the policies and evaluate the Department's compliance with the policy. The Co-Neutrals shall not withhold approval of the policy if it is reasonably calculated to achieve the Goals of this Agreement.

3. By December 1, 2020, CYFD will develop a policy to provide or ensure provision of direct assistance for traditional ceremonies, including arranging for all preparation and providing payment if needed, if Native Children want to participate. The policy will 1) provide for Native Children in State Custody to be presented with information about traditional ceremonies with sufficient time to decide whether they want to participate, 2) affirmatively encourage participation, and 3) facilitate all necessary preparation activities. The Co-Neutrals will approve the policy and evaluate the Department's compliance with the policy. The Co-Neutrals shall not withhold approval of the policy if it is reasonably calculated to achieve the Goals of this Agreement.

4. CYFD is committed to having Native Children in ICWA-preferred placements. By December 1, 2020, when a Native Child is in a non-ICWA-preferred placement, the placement will be reviewed every 30 Days. CYFD will establish protocols governing the 30-Day review process to include families, tribal representatives, legal representatives, and Resource Families. The protocols will require that the aim of the placement review will be to determine what actions, services and supports will enable the child to be moved to an ICWA-approved placement. If State ICWA legislation is passed and is more protective than the federal ICWA, a placement may meet this standard by being preferred by or consistent with the State ICWA legislation. The Co-Neutrals shall approve the protocols, but the Co-Neutrals shall not withhold approval of the protocols if they are reasonably calculated to achieve the Goals of this Agreement. The Co-Neutrals will evaluate compliance with the protocols. CYFD will work with New Mexico Tribes and Pueblos to identify any tribal placement preferences that deviate from ICWA. CYFD will create procedures that enhance accountability for ICWA placement preferences, including allowing the child's tribe or pueblo and extended family members to participate in ICWA-preferred placement reviews, Individualized Planning Meetings and case decision making meetings.

5. **Training**. CYFD will develop an ICWA training plan by December 1, 2020, and implement it by December 1, 2021. ICWA trainings will be developed collaboratively with the CYFD's Academy for Training and Professional Development Team, Protective Services Tribal Liaison, CYFD Tribal Liaison, Tribal Advisors, and culturally responsive experts. The ICWA training will include specific information on the history of ICWA, historic relations between Native American people and state and national government, and the history of culturally insensitive social work practices. It will also include skills development in working with Native families and communities, historical trauma, engagement, cultural humility and culturally responsive intervention techniques for Native American parents and youth and community engagement with New Mexico Tribes and Pueblos, as well as best practices for ICWA. The training will include information on New Mexico Tribes and Pueblos, sovereignty, and jurisdictional issues. The Co-Neutrals shall approve the ICWA training plan, but the Co-Neutrals shall not withhold approval of the training plan if it is reasonably calculated to achieve the Goals of this Agreement. The Co-Neutrals will evaluate implementation of the training plan.

APPENDIX D: BEHAVIORAL HEALTH SERVICES

When assessing CYFD's and HSD's efforts to implement the commitments in this Appendix, the Co-Neutrals will consider, in addition to other data and information, the extent to which CYFD and HSD structure and build a statewide, community-based mental health system that all children and families will be able to access. A statewide system is necessary to ensure that Children in State Custody and their families have prompt access to necessary services regardless of where they live. These services are critical to keeping children with their families or in the most family-like setting possible. This system will include a diverse and full spectrum of community-based services, will decrease reliance on congregate care, keep families together in their community to the maximum extent possible, and greatly reduce reliance on out of state residential placements. Medically necessary mental health services will be provided, in descending order of preference: at home, in a family setting, or in the most home-like setting appropriate to a child's needs and consistent with the Children's Code. The Co-Neutrals will assess whether Defendants have met the Performance Standard with respect to the commitments in this Appendix.

IMPLEMENTATION TARGETS

By December 1, 2020, HSD and CYFD will take the following specific steps necessary to create an effective system for delivery of community-based mental and behavioral health services—including screening/assessment, High Fidelity Wraparound services,[1] evidence-based, well-supported, or promising therapeutic treatment for children with complex trauma, intensive case management, mobile crisis response services and intensive home-based services—to Children in State Custody.

1. **Behavioral Health Care Workforce Development Review.** HSD and CYFD will create a Behavioral Health Care Workforce Development Review with the objective of supporting and expanding provider capacity to provide community-based mental and behavioral health services with reasonable promptness that are accessible throughout the State, and particularly in rural areas. The Behavioral Health Care Workforce Development Review will describe in writing the expected nature, scope, capacity, and structure of the workforce necessary to meet the obligations described in this Agreement, including how HSD works with MCOs on increasing capacity to make available screening/assessment, High Fidelity Wraparound services, evidence-based, well-supported, or promising therapeutic treatment for children with complex trauma, intensive case management, mobile crisis response services and intensive home-based services to every Child in State Custody for whom they are medically necessary. HSD will either create or require MCOs to create a specific hiring/contracting plan that identifies, by county, the number of staff and credentials required to meet the objectives identified in the Behavioral Health Care Workforce Development Review. The Co-Neutrals must approve the Behavioral Health Care Workforce Development Review.

[1] High Fidelity Wraparound services are a critical component in a well-functioning system of care, ensuring children and youth with complex behavioral health needs receive care that is individualized, family and youth driven, strengths-based, culturally competent, and coordinated across systems, particularly for children and youth who are at risk for out of home placements.

2. To assess need, HSD and CYFD will define initial expected service utilization for screening/assessment, High Fidelity Wraparound services, evidence-based, well-supported, or promising therapeutic treatment for children with complex trauma, intensive case management, mobile crisis response services and intensive home-based services. The Co-Neutrals must approve the methodology for predicting expected utilization of these services.

3. HSD will develop and publish reimbursement methodology, billing rates (taking into account validated information regarding adequate rates), and guidance for providers for screening/assessment, High Fidelity Wraparound services, evidence-based, well-supported, or promising therapeutic treatment for children with complex trauma, intensive case management, mobile crisis response services and intensive home-based services, leveraging Medicaid whenever possible. The methodology and guidance will include provider eligibility criteria as well as billing and coding procedures.

4. CYFD, with input from HSD, will adopt regulations governing medication protocols to ensure that Children in State Custody are not overmedicated, while ensuring timely access to medically necessary medication and treatment. The regulations will include a mandatory clinical review process provided by an independent mental health professional with a license to prescribe psychotropic medication for all children prescribed psychotropic medication while in state custody and will include guidance aimed to ensure that medication is not misused as a primary response to trauma-related behaviors. In addition, the regulations will require specific review of: 1) any use of polypharmacology; 2) dosage for all prescribed medication; and 3) use of atypical anti-psychotics. Co-Neutrals must approve the final form of these regulations.

5. HSD will monitor implementation of a term in all contracts with its designees to require that care coordination include identification of physical, behavioral health, and long-term care needs, and providing services to address said needs, in compliance with Section 4.4 of Centennial Care 2.0 Managed Care Organization contracts with HSD.

6. HSD will reinstate language in its Medicaid contracts to prevent children from being rejected or removed from behavioral health services providers. HSD will work with providers to identify and remove other administrative barriers to providing services.

7. HSD will revise its Notice of Action and grievance protocols to require a Notice of Action be provided to the child's caregiver, legal representative, and legal custodian whenever a service recommended by an Individualized Planning Meeting Team is reduced, modified, delayed, or denied, or if the service or is not approved within 10 Days.

8. HSD and CYFD will review and identify the responsibilities shared by both Departments and create a joint process for offering services and supports include screening, assessing, referring, treating and providing transition services to Children in State Custody of the department, including Children in State Custody who were never removed from Respondents' homes or children who have returned to Respondents' homes but who remain Children in State Custody.

The goal of this joint process shall be to maximize each child's access to services and to create unified process for offering services and supports.

9. HSD or its designees will require training through its contracts for those providing care coordination for children in state custody who receive Medicaid, consistent with the requirements in place under Section 3.3.5 and 4.4 of the Centennial Care 2.0 MCO contracts with HSD. HSD will require this training in any and all future contracts with its designees.

TARGET OUTCOMES

1. **Workforce Development.** HSD will work with MCOs to implement the Behavioral Health Care Workforce Development Review, with the objective of expanding and developing the statewide workforce sufficient to implement the system for delivery of community-based mental and behavioral health services described in this Agreement.
    a. By December 1, 2021, HSD will employ sufficient staff such that it has the internal capacity to effectively oversee, monitor, and manage the MCOs and to oversee and develop policy and procedures related to EPSDT.
    b. By December 1, 2021, HSD will require that MCOs have a provider network sufficient to meet the needs identified in the Behavioral Health Care Workforce Development Review and hiring plans.

2. **Training.** By December 1, 2021, HSD or its designees will provide incentives for providers to be trained in evidence-based, well-supported, and promising trauma-responsive services, which include intensive case management, High Fidelity Wraparound services, intensive home-based services, and trauma-based therapies including Dialectical Behavior Therapy (DBT), Multi-Systemic Therapy (MST), trauma-informed Cognitive Behavioral Therapy (CBT), Functional Family Training (FFT), and Eye Movement Desensitization and Reprocessing therapy (EMDR). Training will comply with professional standards and best practices in adult education, including by incorporating experiential and interactive components and using evaluations to measure effectiveness.

3. **Community-Based Mental and Behavioral Health Services.** By December 1, 2022, the following services will be available to every Child in State Custody for whom they are medically necessary, as indicated by the CANS and functional trauma assessments and any follow up. Services will be available immediately where possible and not to exceed 10 Days otherwise.
    a. High Fidelity Wraparound services
    b. intensive case management
    c. intensive home-based services, which include mobile crisis response services and evidence-based, well-supported, or promising trauma-responsive therapies such as Dialectical Behavior Therapy (DBT), Multi-Systemic Therapy (MST), trauma-informed Cognitive Behavioral Therapy (CBT), Functional Family Training (FFT), and Eye Movement Desensitization and Reprocessing therapy (EMDR).

4. By December 1, 2021, every Child in State Custody will receive a comprehensive well-child checkup within 30 Days of entering state custody.

EXHIBIT B

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 LBGTQ+ 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 targetis 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: Teresa Casados FE355BED9AF5442...
Teresa Casados, *Interim Cabinet, Secretary*]
NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT]

Dated: 6/30/2023 By: DocuSigned by: kari Armijo 1BA9EB5EAD00499...
Kari Armijo, *Acting Cabinet Secretary*]
NEW MEXICO HUMAN SERVICES DEPARTMENT

Dated: 6/30/2023 By: DocuSigned by: Tara Ford 53BE04C649644A2...
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

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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twitter.com/publiccounsel

[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.

EXHIBIT C

September 18, 2023

Acting Cabinet Secretary Teresa Casados
New Mexico Children, Youth, and Families Department

Acting Cabinet Secretary Kari Armijo
New Mexico Human Services Department

Tara Ford
Kevin S. Plaintiffs' team

Via electronic mail

Re: Follow up from Co-Neutrals' Site Visit

Dear Acting Secretaries and Ms. Ford,

Thank you for meeting with us last week in New Mexico. Over the course of the week, we met with CYFD caseworkers, supervisors and managers in Albuquerque and Santa Fe (including numerous personnel also covering additional CYFD county offices); CYFD staff and supervisors at the Receiving Center in Albuquerque; the Governor of the Taos Pueblo, his staff and CYFD and HSD leadership at the Santa Fe Indian School; the Lieutenant Governor of the Laguna Pueblo, his staff and CYFD and HSD leadership at the Laguna Pueblo; child behavioral health stakeholders; as well as the parties.

We are appending our letter to the CYFD and HSD Secretaries of September 2022, in which we expressed concerns about challenges we observed during our site visits in New Mexico last year, including high CYFD staff caseloads, the agencies' inadequate supply of family-based placements and CYFD's on-call system. In that letter, we made numerous recommendations, which we have discussed repeatedly with State leaders over the past year. To our dismay, across the board, CYFD staff at all levels during our meetings last week described conditions in the CYFD offices as significantly worse than last year, in part due to the decision to pause most routine hiring at CYFD for months. We were repeatedly and consistently told the result has been substantial vacancies across the agency in investigative positions, PPWs, senior workers, supervisors and management staff. This has created unreasonably large caseloads among caseworkers and supervisors with managers at multiple levels carrying caseloads as well.

HSD and CYFD staff and managers at all levels expressed to us their passion for the agencies' missions, as well as a commitment to the children and families of New Mexico. Because it was not possible to proceed with the parties' meeting last week, we want to convey to you directly the feedback that we received during our recent meetings in New Mexico. The information is of deep concern to us and includes conditions for children that are currently dangerous.

During our meetings, we learned:

- CYFD staff and managers at all levels consistently reported that conditions in the CYFD offices are significantly worse than last year, primarily due to exorbitant caseloads and substantial vacancies caused by attrition, insufficient hiring and numerous employees currently on Family and Medical Leave.
- CYFD staff and managers at all levels reported that CYFD paused routine hiring of frontline staff and supervisors across the state in May 2023. They described two CYFD rapid-hire events – one in May and one in August – but said the results of those events did not keep pace with attrition, and left many positions vacant, resulting in high caseloads for caseworkers and supervisors that many described as "unprecedented" in their experience at CYFD. We were told the rapid hire events did not include supervisors and senior workers.
- For example, CYFD staff reported to us that as of this week, there is no PPW caseworker in CYFD's Santa Fe Office. One investigator reported 51 open child abuse/neglect investigations, including six new cases assigned the morning we met.
- Because of substantial vacancies, all the CYFD county office managers with whom we met described serving as the primary caseworker for between 25 and 40 children currently. These case assignments, we were told, in numerous instances do not appear in the agency's data reports. In our work with other states, we have never seen so many children's cases being managed directly by supervisors and county managers.
- CYFD supervisors and managers reported that CYFD essentially stopped hiring supervisors and senior staff in May 2023, and did not include these positions in the agency's August 2023 rapid-hire event, despite pervasive supervisor and senior staff vacancies. They reported the vacancies have deprived many caseworkers of adequate supervision and support and some workers currently have no direct supervisors.
- The remaining CYFD supervisors with whom we spoke reported they directly carry many children's cases, without exception, and expressed concern that they have been unable to supervise their staff appropriately due to burgeoning workloads. Many described their jobs as "impossible" because of the large number of staff they are assigned to supervise and the substantial number of children whose cases they are directly managing.
- At least eight CYFD employees – both managers and staff – indicated they have prepared their resignations and are currently discerning whether to terminate their employment with CYFD because of the conditions that had worsened since May 2023. They report that they have stayed because of their commitment to their colleagues and their desire to not make things even more difficult for them.
- The lack of staffing is exacerbated by the requirements for additional on-call work. Many CYFD caseworkers and supervisors are required to work "on-call" shifts overnight, and inadequate staffing means many of them do so numerous times per

month. The on-call assignments require staff and supervisors to respond to emergencies overnight then report to work the next morning. The result in multiple instances was reported to be caseworkers and supervisors going without sleep for more than 24 hours, several times per month, including in some instances during extensive drives when they are forced to transport children because of a lack of transportation aides. This practice is a serious safety concern. Many CYFD staff and supervisors said the practice had led numerous colleagues to resign since May 2023.

- CYFD staff reported to us that vacancies and insufficient hiring in Albuquerque have also resulted in many CYFD caseworkers and supervisors being required to monitor children in offices because of a lack of safe placements for children and/or older youth's reported refusal of placements. They feel untrained to take on these direct caregiving responsibilities and are frequently in situations where they feel unsupported and unsafe.
- Because of staffing shortages, CYFD staff and supervisors reported a significant backlog of legally free children in pre-adoptive homes for whom permanency is stalled because CYFD staff have been unable to complete the disclosures necessary to advance the case.
- CYFD staff, supervisors and managers at all levels reported that staff shortages had worsened communication with relative and non-relative caregivers, and contributed to families choosing to close their homes over the past several months, worsening the shortage of family-based placements. Several tribal representatives with whom we met also described poor communication with staff in CYFD offices, citing unreturned phone calls and emails due to staffing shortages.
- CYFD staff and managers in Albuquerque reported that one of the most significant providers of behavioral health services to children in Bernalillo County had notified the State it was closing at the end of this month. CYFD staff and managers said there is no plan in place to transition children in custody to new providers and they were unaware of HSD, the MCOs or the CBHC playing any visible role to prevent a cutoff in behavioral health services to children in state custody as a result of the closure.
- CYFD staff reported a backlog for families awaiting home studies in order to become resource parents. Some CYFD staff said they understood the contract for the vendor who trains CYFD staff to conduct home studies, Children's Consortium, had not been timely renewed by CYFD in July 2023. Numerous other CYFD staff and managers in Albuquerque reported that one of CYFD's private vendors, All Faiths, told CYFD staff that it could not accept new home study referrals in September due to volume. At least one staff reported they have been assigned to complete home studies for new families but they have not received specialized training to do so.
- CYFD staff who are assigned to recruit families as resource caregivers said they lacked resources and an overall strategy to do the work effectively, and in any event, many said the CYFD offices had become so consumed by rising caseloads that they have shifted their focus to include helping their colleagues manage children's cases. They felt that

even if they identified willing families, there were insufficient staff to conduct home studies and complete licensure for them.

- CYFD managers reported that a major reorganization of CYFD is scheduled to take effect at the end of the month, but they were unaware of a communication strategy to inform frontline employees of the changes. Among the CYFD staff at all levels with whom we spoke, there is widespread confusion about the nature of the reorganization, its purpose, the timing of the personnel shifts and its intended impact.
- Because the CYFD supervisors and county managers with whom we spoke are carrying a diverse portfolio of children's cases (e.g., Investigations, PPW, Placement and In Home) they assumed they would have to continue to do so regardless of what, if any, new role they were assigned as part of the reorganization.
- Many CYFD caseworkers and supervisors, in particular, expressed confusion and anxiety about the reorganization, unsure of what it meant. We learned from several CYFD managers that the reorganization will move primary case management for adoption cases from Placement staff to PPW staff, but none of the Placement and PPW staff with whom we met were aware of that possible shift. Some of the CYFD managers expressed concern to us that shifting this responsibility for primary case management of adoption cases to PPW staff, although theoretically a positive change, in the midst of the current staffing shortages would worsen conditions in the offices.
- CYFD staff and managers at all levels consistently said that once the agency begins to hire staff and supervisors routinely again, it will take a while to recover from the hiring pause. They acknowledged the state hiring process, the schedule for New Employee Training and graduated caseloads, which is an essential retention strategy, meant meaningful caseload relief for incumbent CYFD caseworkers, supervisors and managers was unlikely before 2024.
- CYFD staff and managers at all levels described substantial service gaps for children, particularly behavioral health services, and with few exceptions, did not describe any meaningful assistance in their cases from HSD or the MCOs.

Last year we described to the Parties a system that was in *crisis*. This year, based on reports from scores of CYFD employees at all levels and key stakeholders with whom we met, we believe the system is in a *state of chaos*. Positions are pervasively vacant in CYFD due to attrition, and numerous staff are reported to be on Family and Medical leaves due to job stress. Supervisors and managers are acting out of role, directly managing children's cases. They describe doing their very best, but the reality leaves them too little time for actual supervision of staff, many of whom are reportedly resigning before their first anniversary because of poor work conditions. Resource families are closing their homes, reportedly in numerous instances due to poor communication with overwhelmed caseworkers and supervisors. At the same time, a reported backlog of new (kin and non-relative) families awaiting home studies grows. A mounting number of children and families ready for adoption reportedly await the completion

of their case disclosures; CYFD staffing shortages are stalling permanency cases. And some investigators are assigned dangerously high caseloads, unable to keep up with the crush of work. From the many consistent reports we received, the situation is worse than last year, deteriorating, and requires effective immediate action to protect children's safety.

Last year we made numerous recommendations to the agencies (see attached) and we restate those here because they remain critical opportunities to establish stability in order to advance the *Kevin S.* commitments. We urge the State first and foremost to take every reasonable step as urgently as possible to ensure adequate staffing and repair conditions in the CYFD offices. In addition, we recommend CYFD quickly retain a group of temporary workers, perhaps experienced retirees as other states have done, to move permanency cases toward adoption finalization by completing backlogged disclosures, and hire staff specifically for the CYFD on-call system as other states have done.

Thank you again for your time last week. We are available to meet with you to discuss ideas for dealing with this emergency.

Sincerely,

Judith Meltzer

Kevin Ryan

Judith Meltzer
Center for the Study
of Social Policy

Kevin Ryan
Public Catalyst

cc: Julie Sakura, General Counsel, CYFD
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Attachment

EXHIBIT D

January 26, 2024

Cabinet Secretary Teresa Casados
New Mexico Children, Youth, and Families Department

Cabinet Secretary Kari Armijo
New Mexico Human Services Department

Tara Ford
Kevin S. Plaintiffs' team

Via electronic mail

Re: Follow up from Co-Neutrals' Site Visit

Dear Secretaries and Ms. Ford,

We are glad to have had the opportunity to meet with you while we were in New Mexico. Over the course of the week, we and our teams met with many CYFD caseworkers, supervisors and managers in the Albuquerque, Santa Fe, Las Vegas, Dona Ana, Roswell, San Juan, McKinley, and Valencia offices; CYFD staff and supervisors at the Receiving Center in Albuquerque; the Governor and staff of one Pueblo and leaders from other Pueblos; other community members, including behavioral health stakeholders; and the *Kevin S.* lawsuit parties. We found staff at all levels to be candid in their conversations. Given that Secretary Casados and CYFD leadership visited many of the same offices that we did earlier this month, we believe many of the observations that we outline in this letter will not be surprising.

We had hoped when undertaking these visits to county offices, four months after our last site visits, that we would see evidence of improvement. However, what we heard and observed was to the contrary; we heard about deteriorating conditions and crisis situations in most of the offices we visited. In our assessment, the issues we identified in our September 2023 letter remain and, for the most part, there has been little to no progress in addressing them. Last year the parties engaged in extensive discussions to reach agreement on a Corrective Action Plan (CAP) designed to address many of the problems we identified last year and in 2022. The State's weak performance implementing many aspects of the CAP – for example, with respect to caseloads and focused resource family recruitment – appears to have worsened the situation. We plan to send you an updated memo on the CAP next month after we have completed our assessment of additional data and information. But we do not want to wait until then to communicate to you our understanding that there currently exist serious risks to child and staff safety, as we underscored when we spoke with you on January 18, 2024.

There are areas where we think there is some positive momentum. Implementation of the pilot in Dona Ana is on track. In comparison to other CYFD offices visited, Dona Ana's staffing, although incomplete, appears more stable than other CYFD offices. Our on-site validation of caseload data with CYFD staff supported our view that while the work is not complete, the State is making real improvements in the accuracy of caseload data. Also, the continuing work to listen to and engage with Tribal and Pueblo leaders and staff is beginning to make a difference in increased trust and better working relationships with the Nations, Pueblos, and Tribes, based on the feedback we heard. There remains a lot of work to be done in both of these areas, but constructive work has started.

Similar to our prior visits, we again encountered CYFD staff who were committed and dedicated to their jobs and to the children and families they serve, and who are waiting for vacancies to be filled and resources to be provided as anticipated in CYFD's implementation of its Workforce Development Plan. In most sites, there was a sense of camaraderie among staff units, although many staff, supervisors, and managers reported that the restructuring that occurred in October 2023 has caused divisions and silos to emerge or deepen.

When we met with the parties on January 18, 2024, we provided a general verbal summary of our observations. We have outlined below more specific information.

Caseloads and Staffing

- Prior to our meetings in New Mexico, we worked with CYFD's data staff to assess worker level caseload data as of January 5, 2024. We frequently shared this information with staff in the county offices that we visited, and often found that the data on current caseloads were accurate.
- We heard that CYFD managers and supervisors in most of the offices we visited continue to carry cases, which is sometimes reflected in the data.
- Seven investigative staff in Bernalillo County reported responsibility for over 40 investigations each, including two who reported their caseloads as over 120 investigations. Several days before our visit, three investigators had departed the agency, leaving 376 investigations to be newly re-assigned to investigators, supervisors, and managers, many of whom already manage unreasonably high caseloads.
- We also learned that there is a backlog of over 2,000 investigations in CYFD's Metro and Northeast regions that are in various stages of inquiry and decision-making. Some of the pending investigations, we were told, date back to the first half of 2023. Staff in one office reported there are numerous investigations where children have never been seen by CYFD even after the agency determined that a report of alleged abuse or neglect warranted investigation. **This is a clear and urgent safety risk for children.**

- Most CYFD supervisors and new staff were unaware of the graduated caseload standards and how they should be implemented. Given the crisis situation in most offices, there are powerful incentives to ignore the graduated caseload standards.
- CYFD managers, supervisors, and staff across the state repeatedly reported that the agency's months-long hiring freeze in 2023 worsened staffing levels among positions that are essential to the work of the agency, regardless of organizational structure, such as investigators, PPWs, and placement staff. Staff turnover and the number of vacancies continue to be very high, placing a consistent strain on current staff. Some of the staff, supervisors, and managers with whom we spoke reported they are planning their own retirements and resignations in the near future which will create yet more vacancies that need to be filled.

Workforce Support

- Although CYFD re-commenced hiring staff in September 2023, many staff and supervisors reported the training academy was not able to accommodate the influx of workers needing New Employee Training, which created delays in new staff receiving training, and in turn, their ability to begin assisting with caseload assignments. Some workers reported waiting over a month.
- Many CYFD managers are stretched unreasonably thin, with lengthy travel now required in many instances in order to provide support and supervision to the staff they manage across different and distant counties in the new pillar system. In some cases, managers serve as the interim supervisor for vacant supervisor positions although their responsibilities span several offices. The need for supervisors (and managers serving as proxy supervisors) to sign off on decisions, guide case direction, and/or participate in required staffings has caused further delays in closing investigations and moving children toward permanency, whether it be reunification or adoption.
- Most CYFD staff reported feeling supported by their supervisors. Others reported they effectively do not have a supervisor because the position is vacant and a manager is filling in as supervisor but is seldom available because of their new managerial responsibilities over other counties in the pillar system.
- Some CYFD staff have received promotions to supervisory positions but they reported they were not provided with supervisory training to prepare them for their new role and responsibilities.
- Some CYFD workers reported that they received training on recognizing and responding to trauma in children, but they reported feeling that the stress and trauma they are experiencing

– particularly with respect to critical incidents in the CYFD offices and unreasonably high caseloads – have gone unrecognized by leadership.

- CYFD staff in one office reported no longer receiving reimbursement for mileage when they utilize their own cars to transport children or drive to/from visits.
- There was a reported change in the process for staff in one office to request and receive overtime compensation, but this has not been clearly communicated to CYFD workers.
- The on-call requirement for CYFD's case-carrying staff in most offices was viewed by almost every worker as untenable and not sustainable. The frequency with which it occurs and the hours that it involves result in CYFD staff reporting that they get little to no sleep before the following workday when they are required to show up at the beginning of their shifts. Although the pillar system focuses on specialization, CYFD's legacy on-call system does not. In most of the CYFD offices we visited, investigators, PPWs, and placement staff are required to work on-call shifts. PPW and placement supervisors and staff reported they are routinely working out of their pillar practice areas to conduct and oversee investigations during on-call shifts, but without sufficient training. New CYFD staff reported they receive little training for on-call assignments to respond to investigations after hours (sometimes only two instances of observing investigative staff) and many reported feeling unprepared when they are required to respond to investigate allegations of abuse and neglect during their mandatory on-call shift.

Office Stays and Child Safety

- CYFD personnel reported that children's stays within the Roswell, Las Vegas, and Albuquerque offices have occurred consistently for more than a year. Staff reported they are mandated to work shifts to provide supervision for children in the offices, many of whom provide serious emotional, medical, and behavioral challenges that CYFD staff are not prepared to handle. In Roswell, this has resulted in repeated calls to law enforcement to assist in managing youth's behaviors. Staff reported not receiving the necessary training to administer medication to children, which staff described as unsafe and extremely stressful. Some CYFD offices are currently using temporary workers or contracted aides to assist staff with supervising children, however, it does not appear that these staff have been provided with adequate training on trauma, behavior management, medication management, and how to de-escalate behaviors when conflicts or crises occur. In Roswell, CYFD staff frequently respond by calling law enforcement and transferring children to hospital emergency rooms.
- In CYFD offices where staff are repeatedly responsible for supervising children who are sleeping overnight in offices, the staff report not feeling safe. In reviewing critical incident reports provided by CYFD over the last six months in addition to what we heard from staff

during our meetings, **we believe there are conditions now that are unsafe for children and unsafe for staff.**

- CYFD managers, supervisors, and staff repeatedly reported that office stays are a direct result of New Mexico not having developed an appropriate and adequate array of community-based placements and services.

Resource Family Recruitment and Retention

- In every CYFD office we visited, we were unable to identify a staff person who is singularly or mainly charged with recruitment of non-relative resource homes and has the time and resources to perform that function. Implementation of county-based recruitment plans is not well organized or proactive. We were told that when resource family recruitment is discussed, it is during ad-hoc meetings among existing investigative, PPW, and placement staff at the county offices as an additional piece of work. Staff pervasively reported that there is no funding available for resource family recruitment activities.
- Many CYFD staff and supervisors told us they did not learn that their offices had a 2023 recruitment target for resource families until the Fall of last year.
- Given children's office stays, placement challenges, and other demands on too few workers, there continues to be a lack of focus on retention of resource parents.
- Babies and infants are being placed at the Receiving Center – some for more than a week – reflecting a significant and unacceptable deficiency in the pool of available resource homes.
- Adoption specialist positions have been eliminated in some counties, leaving no local staff responsible and available for recruiting adoptive families for legally free children except for PPWs who are already overburdened with high caseloads and other responsibilities.

Access to Community-based Services

- The lack of access to community-based services to support families and treat children remains a pressing need. We rarely heard staff identify community-based services that were readily available and accessible to the children and families with whom they work. CYFD personnel reported long wait lists for services ranging from well-child medical check-ups to medication management. Some counties had no providers for specific services necessary to meet children's needs. We were told that TFC placements within New Mexico are so difficult to obtain that staff in one office reported having to contact other states for this level of service.

- CYFD staff reported frequently not knowing who to ask for help in securing resources, a problem that is currently more pronounced due to the reorganization. As staff roles have changed, workers are unclear how to get help in their efforts to help families.

Office Morale and Culture

- Across the board, CYFD staff feel stressed by unreasonable expectations, frustrated by the lack of services and resources, angry at unreasonably high caseloads, often fearful about children's office stays and the safety of children they are unable to visit or see due to their caseloads, and unsupported by leadership.
- There is widespread confusion about CYFD's reorganization by staff at all levels. According to most of the CYFD staff who spoke with us, this change felt abrupt and with little communication or clarity. Staff reported a continued lack of communication over roles and responsibilities which is exacerbating staff's feelings of not being heard or supported. Workers reported that it has resulted in, or deepened, silos within offices and an erosion of teamwork.
- CYFD staff salaries were assessed late last year, and in some cases adjusted in a positive direction though not by an amount that has made much of a difference to workers given the reported uptick in benefits costs to staff. Staff also reported that the criteria used to make salary adjustment determinations were not transparent or clearly communicated to staff. As the 10 percent pay raise that occurred at the beginning of last year was eliminated once the salaries were adjusted, some staff reported the amount in their paycheck actually decreased.
- CYFD staff reported again about the inequity in pay band classification with PPW positions receiving the lowest pay. Given the centrality of the PPW position, workers and managers believe there should be parity across pay bands. Many staff said such parity would be fair given the demands and skills required for the different jobs, and would reduce what is viewed as excessive movement between staff positions – from PPW roles to investigation or placement staff positions.

Need for Immediate Action

We understand that CYFD leadership is committed to hiring additional staff through rapid-hire events and other staff recruitment strategies. However, based on what we learned during our meetings in New Mexico, we believe leadership must take immediate and extraordinary steps to stabilize the conditions in many of the CYFD offices we visited. The unsafe backlog of child abuse and neglect investigations requires the deployment of new, additional resources, such as contracting with retirees and deploying trained staff and managers from CYFD's central team. Exorbitant caseloads and very high staff turnover warrant hiring goals and performance that are at least 25 percent greater than the number of investigator, PPW, and placement positions

currently assessed to be needed. Like other States across the nation that have undertaken the initial phase of systemic reform in the face of crushing caseloads, New Mexico needs to over-hire in order to account for continuing turnover. An influx of new workers requires the State to expand its training capacity and ensure that new personnel can expeditiously begin the process of onboarding and training. We have made these and other recommendations previously, and we are happy to discuss them with you. In sum, the agency must begin acting like there is in fact a crisis that threatens children's safety and compels new, urgent, barrier-breaking activity.

Thank you again for your time last week. We look forward to meeting with you to discuss ideas for dealing with these issues that require immediate action.

Sincerely,

Judith Meltzer

Kevin Ryan

Judith Meltzer
Center for the Study
of Social Policy

Kevin Ryan
Public Catalyst

cc: Julie Sakura, General Counsel, CYFD
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EXHIBIT E

February 23, 2024

Cabinet Secretary Teresa Casados
New Mexico Children, Youth, and Families Department

Cabinet Secretary Kari Armijo
New Mexico Human Services Department

Tara Ford
Kevin S. Plaintiffs' team

Via Electronic Mail

Re: *Kevin S., et al. v. Blalock et al.*
Co-Neutrals' Corrective Action Plan (CAP) Implementation Memorandum

On June 30, 2023, the Parties to *Kevin S., et al v. Blalock* signed a negotiated Corrective Action Plan (CAP)[1] that includes strategies deemed necessary to implement the *Kevin S.* Final Settlement Agreement (FSA).[2] Specifically, the CAP "…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." Additionally, "[t]he 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 memorandum was prepared by the *Kevin S.* Co-Neutrals to provide information on the State's implementation of select CAP commitments for which the State has provided data and/or information to the Co-Neutrals. The Co-Neutrals have prepared this memorandum to ensure that certain relevant and current information is available to the Parties to inform their ongoing discussions about progress in *Kevin S.*

The preliminary analyses in this memorandum are based on data provided by CYFD and HSD. The Co-Neutrals gathered additional information during discussions with the Parties, key stakeholders, and CYFD staff during meetings in New Mexico in September 2023 and January 2024. The Co-Neutrals do not make any judgments regarding FSA Performance Standard achievement within this memorandum; those judgments are reserved for the Co-Neutrals' Annual Report, which is due on November 15, 2024. Additionally, as the data analysis included in this memorandum is based upon preliminary data submissions by the State, most data have not yet

[1] The *Kevin S.* CAP can be found here.
[2] The *Kevin S.* FSA can be found here.

been validated by the Co-Neutrals. Wherever possible, the Co-Neutrals in this memorandum used methodologies consistent with the approved Data Validation Plan (DVP),[3] although some differences between the structure and content of the preliminary data and the State's annual data prevented uniform application. Wherever methodologies varied, this memorandum describes the limitation that led to the discrepancy and provides detail of the approach applied in this analysis.

In this memorandum, the following CAP provisions are discussed:

- CYFD Workforce Caseloads (FSA BTO10)
- Family Based Placements (FSA BTO6)
- Treatment Foster Care (FSA BTO6)
- Behavioral Health Services (FSA DTO3)
- Critical Incident Review (FSA BTO2, 3, 4)
- Joint Powers Agreement and Tribal Resources (FSA Appendix C)
- Well-Child Visits (FSA DTO4)
- Data Submissions

In each section, the Co-Neutrals summarize the CAP commitments and provide the most recent data available to assess progress on that commitment.

For a number of CAP commitments – for example, including but not limited to, implementation of pilots for coordinated action within local communities and follow up to the Appendix C Tribal Listening Session – the State and/or Co-Neutrals have previously reported information related to implementation with the Parties; thus, discussion of these are not included in this memorandum.

1. CYFD Workforce Caseloads (FSA BTO10)

CAP Commitments:

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.

[3] The *Kevin S.* DVP can be found here.

Data and Discussion:

The State provided the Co-Neutral team with a list of all individuals assigned as primary worker on at least one case as of January 5, 2024. The DVP defines case-assignable workers as, "staff with any of the following titles – Investigation Case Worker, Permanency Planning Worker, In-Home Services Provider, or Placement Worker – who have completed New Employee Training (NET) and are eligible for case assignments."[4] Individuals with supervisory and managerial titles are not case-assignable, nor are staff with titles such as "Investigations Case Aide," "Kinship Specialist," and other positions that do not typically require case-carrying duties.[5]

As defined in the CYFD Workforce Development Plan (WDP),[6] Investigations Case Workers may be assigned as primary workers for a maximum of 12 investigations; Permanency Planning Workers (PPW) for a maximum of 15 children; In-Home Services Workers for a maximum of eight cases; and Placement Workers for a maximum of either 15 adoption cases, 20 licensed families, or 15 home studies.

The WDP also prescribes graduated caseloads for case-assignable workers who have recently completed NET, such that the maximum number of investigations or permanency cases an individual may be assigned as a primary worker depends on the number of months since the worker completed NET.[7,8] Per the methodology agreed upon in the DVP, the applicable caseload standard for individuals with mixed caseloads weights each case according to its type (e.g., an investigations case counts as one-twelfth or 8% of the standard, a child in a permanency case counts as one-fifteenth or 7% of the standard, and so on).

[4] DVP p. 6.
[5] DVP pgs. 99-100.
[6] CYFD's WDP can be found here.
[7] The State agreed that in the first two months after completing NET, a worker cannot be assigned as primary for any investigation case but can be assigned as primary for up to five permanency cases. In the third and fourth months after NET, a worker can be assigned as primary for up to three investigations cases or eight permanency cases. In the fifth and sixth months after NET, a worker can be assigned as primary for up to six investigations cases or 12 permanency cases. After the sixth month following NET completion, a worker is eligible for full caseloads. There is no graduated caseload standard for placement or in-home services.
[8] The data the State submitted did not include a NET completion date for 268 of the 364 individuals assigned as primary on at least one case. Of these 268, 200 are in case-assignable roles. Individuals in case-assignable roles are only eligible for case assignment after completing NET, and the graduated caseload period is calculated from the NET completion date. Therefore, the Co-Neutrals cannot determine with certainty which and how many primary cases an individual in a case-assignable role is eligible to carry without knowing the date of NET completion.

According to data submitted by CYFD,[9] there were 364 CYFD staff assigned as a primary worker to at least one case as of January 5, 2024.[10] As summarized in Table 1:

- **23 percent of these individuals had caseloads compliant with the applicable caseload standards as defined in the CYFD WDP;**
- **34 percent had caseloads above the applicable standard, including 19 percent (70) of case-assignable workers whose caseloads were above 200 percent of the standard, the commitment set forth in the CAP.**[11]

[9] The State submitted data from three sources. Primary case assignments for January 5, 2024 were from FACTS data (CYFD's system of record). The position titles and start dates of individuals were from CYFD's Human Resources system (SHARE). NET completion dates for individuals were from Cornerstone (an online training platform). The State completed a name match to link the SHARE and Cornerstone data to the FACTS assignment data. The State was not able to find a current match in SHARE for 15 workers who were assigned as primary on at least one case on January 5, 2024; in the data submitted to the Co-Neutrals, six individuals were listed as "Termination," four were listed as "No longer with Agency," two as "Temp," and three as "Not found."

[10] Excludes 15 workers who were assigned as primary workers but did not appear in CYFD's Human Resources system (SHARE) as current staff on January 5, 2024.

[11] For this analysis, the Co-Neutrals assumed that case-assignable workers missing a NET completion date who were hired in 2021 or later and did not have a senior job title (e.g., "Investigations Senior Case Worker" or "Permanency Planning Senior Worker") (n = 81) had not completed NET and were thus ineligible to carry cases. If a case-assignable worker missing a NET completion date had a senior job title (n = 79), or they had a non-senior job title but were hired before 2021 (n = 40), they were assumed to be eligible to carry a full caseload. The year 2021 was selected as the cutoff for these assumptions because in 2021 the DVP was finalized, and the Co-Neutrals and the State reached agreement on caseload standards and the commitment that workers needed to complete NET before being assigned any cases.

Table 1: Count of Individuals Assigned as Primary on Any Case, by Compliance with Caseload Standard[12]

	N	%
Individuals assigned as primary on any case	**364**	
Total caseload compliant w. standard	**82**	23%
0-50%	33	9%
51-100%	49	13%
Total caseload above standard	**124**	34%
101-200%	54	15%
201-400%	54	15%
+400%	16	4%
Ineligible for assignment	**158**	43%
Ineligible - new hire (with NET)	4	1%
Ineligible - hired after 2020 (no NET)	81	22%
Ineligible - role	73	20%

Source: Analysis of data submitted by CYFD on January 12, 2024.

Forty-six (13%) of the 364 individuals assigned as primary worker on at least one case on January 5, 2024 were supervisors, 27 others were in a non-case-assignable role,[13] and another 81 (22%) appear to be ineligible to carry cases because there was no record in the submitted data that they completed NET.[14] Another four individuals were assigned as primary worker on at least one investigation, but had completed NET within the two months before January 5, 2024, and were therefore ineligible for case assignment per the State's graduated caseload standard.

[12] This table reflects the analytic assumptions described in footnote 11. To assess the sensitivity of findings to the specific assumptions, the Co-Neutrals calculated compliance using a range of assumptions. Under the most stringent assumptions – that individuals with no record of NET completion who were hired after 2020, regardless of their job title, are ineligible to carry cases – 20 percent of individuals had caseloads compliant with the standard, while 27 percent had caseloads above the standard, including 16 percent whose caseloads were above 200 percent of the standard. Under more flexible assumptions – that all individuals with missing NET dates completed NET on their date of hire – 32 percent of individuals had caseloads compliant with the standard, while 46 percent had caseloads above the standard, including 25 percent whose caseloads were above 200 percent of the standard.

[13] Supervisory and managerial titles are not case-assignable, nor are titles such as "Investigations Case Aide," "Kinship Specialist," and other positions that do not typically require case-carrying duties.

[14] See discussion in footnote 11.

The State has reported making significant progress addressing issues with the quality of its caseload data. The Co-Neutrals confirmed this progress during interviews with CYFD staff during site visits to eight county CYFD offices across New Mexico in January 2024, but some issues remain. For example, 84 cases had no primary worker assigned on January 5, 2024 in the data submitted, and 15 individuals assigned as primary workers did not appear to be current CYFD employees (assigned as primary workers for a total of 141 cases).[15] When the Co-Neutral team reviewed reported caseloads with some CYFD staff during interviews in January 2024, the results were mixed. Some staff agreed on reported caseload assignments, and others reported meaningful discrepancies between their understanding of their caseloads and the counts reflected in FACTS. Additionally, some supervisors and managers reported that they were assigned to work on cases as the primary worker but those assignments were not reflected in FACTS.

2. Family-Based Placements (FSA BTO6)

CAP Commitments:

a. 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.
b. 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.
c. 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.

[15] See discussion in footnote 9.

Data and Discussion:

CYFD has provided the following data related to resource home gains and losses between June 30, 2023 and November 30, 2023. These data have not been validated by the Co-Neutrals; validated data will be included in the Co-Neutrals' next Annual Report.[16]

During the five-month period of July 2023 to November 2023, CYFD reports that the agency licensed 32 new non-relative resource homes and 161 relative homes, for a statewide total of 193 resource homes. During the same period, the State reports 228 resource homes (both relative and non-relative) were discontinued, representing a net loss of 35 homes. The number of newly licensed and discontinued relative resource homes is relatively flat – 161 new and 169 closed. The number of new non-relative resource homes (32) is nearly half the number of non-relative resource homes that discontinued their license (59). See Table 2 for county-by-county detail on discontinued and new resource homes.

[16] CYFD reports that valid data related to the exact dates providers discontinue providing placement services is inconsistently documented. For example, workers may take steps to inactivate a license when a provider discontinues placement services or the license may lapse without a renewal.

Table 2: Number of Discontinued and New Non-Relative and Relative Resource Homes June 30, 2023 – November 30, 2023

County	Discontinued			Newly Licensed		
	Foster Care	Relative Home	Total	Foster Care	Relative Home	Total
Bernalillo	14	31	**45**	9	56	**65**
Chaves	0	5	**5**	1	7	**8**
Cibola	0	4	**4**	0	4	**4**
Colfax	3	2	**5**	0	2	**2**
Curry	2	3	**5**	2	7	**9**
De Baca	0	1	**1**	0	0	**0**
Dona Ana	8	16	**24**	4	13	**17**
Eddy	1	11	**12**	1	10	**11**
Grant	0	2	**2**	0	1	**1**
Lea	6	17	**23**	3	4	**7**
Lincoln	3	0	**3**	0	0	**0**
Los Alamos	0	0	**0**	0	1	**1**
Luna	0	4	**4**	1	0	**1**
McKinley	2	3	**5**	2	9	**11**
Mora	0	2	**2**	0	0	**0**
Otero	4	3	**7**	1	4	**5**
Quay	0	0	**0**	0	2	**2**
Rio Arriba	0	5	**5**	0	1	**1**
Roosevelt	1	4	**5**	0	2	**2**
San Juan	1	12	**13**	1	6	**7**
San Miguel	0	6	**6**	2	3	**5**
Sandoval	6	7	**13**	1	3	**4**
Santa Fe	1	9	**10**	1	6	**7**
Sierra	1	0	**1**	0	2	**2**
Socorro	1	0	**1**	0	4	**4**
Taos	1	2	**3**	0	2	**2**
Torrance	1	3	**4**	0	1	**1**
Valencia	3	17	**20**	3	11	**14**
Statewide	**59**	**169**	**228**	**32**	**161**	**193**

Source: Data provided by CYFD; data have not been validated by the Co-Neutrals

To increase capacity and focus on resource home recruitment and retention, the State committed in the CAP to assign one placement staff in Bernalillo, Dona Ana, Santa Fe, San Juan, and Chavez/Eddy to focus exclusively on recruitment from July 2023 until at least September 30, 2023. In September 2023, the Co-Neutrals met with Placement workers in two of these county offices and no one interviewed in either office was able to identify a Placement worker whose sole, or even primary, responsibility was resource home recruitment. Staff reported that due to vacancies

and the workload of other staff in their units, that in addition to recruitment, they had other substantial assignments such as completing adoption disclosures, providing training for resource parents, and supervising children who were placed in the CYFD office.

Per the CAP agreement, in July 2023, CYFD reported that they executed a contract with a private contractor to develop recruitment and retention strategies to increase the number of family-based placements throughout the state. The contractor has proposed a plan for a "spider-web networking" model that includes holding house meetings to use word-of-mouth advertising to generate applicants, and is developing a mobile app to assist with placement matching and resource parent support. The State reported that it expects to launch this model in one county in February 2024.

The contractor also reported meeting with County Based Recruitment Teams and other CYFD statewide and regional Placement staff to discuss general recruitment, targeted recruitment, support, and retention of resource parents.

Despite the still-urgent need to recruit additional resource parents, **the Co-Neutrals are unable to confirm that specific capacity focused on growing new resource homes in each county throughout the State has been added pursuant to the CAP commitments.** In fact, in the eight counties visited by the Co-Neutrals in January 2024, CYFD appears to have lost ground and staff reported that they do not have dedicated time and resources for this work. Implementation of county-based recruitment plans was not well organized or proactive. CYFD staff repeatedly and consistently reported that when resource family recruitment is discussed, it is during ad-hoc meetings among existing investigative, PPW, and Placement staff at the county offices as an additional piece of their work. Staff pervasively reported that there is no funding available for resource family recruitment activities. The acute shortage of resource families has led the State to place babies and infants at the Bernalillo County Receiving Center – some for weeks – reflecting a significant and unacceptable deficiency in the pool of available resource homes.

3. Treatment Foster Care (FSA BTO6)

CAP Commitments:

a. 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. 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. 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.

b. 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.

Data and Discussion:

Pursuant to the CAP, the State instituted new processes and procedures for managed care organization (MCO) care coordinators to seek and secure Treatment Foster Care (TFC) placements for children. These procedures are outlined in LOD #100[17] (effective August 14, 2023) which includes the following:

- When a child is recommended for TFC, CYFD will submit the referral packet and current assessment to the MCO for medical necessity review and pre-approval.
- In response, the MCO sends the pre-approval notification with the medical necessity determination back to CYFD.
- The MCO care coordinator assigned to the child has the responsibility for coordinating and obtaining TFC services for the child, and will document all activities in the child's file.
- Any denials, reductions, or modifications for TFC service requests will be reviewed by the Medical Director at the MCO, and the Medical Director's decision will be sent to the CYFD and HSD Cabinet Secretaries.
- If TFC services are not authorized by the MCO, HSD, and/or CYFD, the State will identify alternative services for the child within five days.

The MCOs are required to collect data related to this process and the results.

Data submitted by HSD[18] indicate that between August 15, 2023 and December 31, 2023, **CYFD sent referrals to MCOs for TFC services for 23 children, and five (22%) of these children were ultimately placed in TFC.** There were an additional 10 requests for reauthorizations of TFC services for children who were already in a TFC placement to authorize them to remain in their placement as the initial authorizations were time limited; two of these were for two of the five children who received referrals for new TFC services and were ultimately placed in TFC in the period. **All 10 of these reauthorization requests were approved.**[19] See Table 3 for a summary.

[17] LOD #100 can be found here.
[18] The summary presented here is based on the unvalidated data the Co-Neutrals received from HSD and thus may not be a comprehensive view of TFC services in the third and fourth quarters of 2023. It is possible that referrals and placements took place that are not reflected in the submitted data.
[19] The data submitted by the State do not describe why reauthorizations were necessary for these placements. Two of the reauthorizations were requested by CYFD within a month of the initial placement. For the other eight reauthorizations, the data did not include the date of the initial referral for TFC services or the initial placement.

Among the 18 children who were referred and not placed in TFC, MCOs sent referrals to an average of seven TFC agencies per child. HSD reports that the TFC agencies took an average of six days to respond to referrals. Agencies denied 84 percent of these referrals, and no response was recorded by the MCO to the remaining 16 percent. The most common reason for the TFC agencies to deny placement as documented by the MCOs was the lack of an appropriate treatment match (74% of denied referrals). There were no substantial differences in the response trends between the three MCOs.

Table 3: Summary of Children Referred for New or Reauthorized TFC from August 15, 2023 to December 31, 2023

Total number of children referred for new or reauthorized TFC services	**31**
Children for whom CYFD submitted *new* requests for TFC services	**23**
Children placed in TFC services	*5 (22%)*
Avg. number. of days between the MCO's referral to TFC agency and start of TFC services	16
Children not placed in TFC services	*18 (78%)*
Avg. number of TFC agencies to which MCO sent referrals for a child	7
Avg. number. of days from MCO referral to TFC agency response	6
Referrals with no recorded response from agency	20 (16%)
Referrals denied (denied reason below)	104 (84%)
No appropriate treatment match	77 (74%)
No available space	15 (14%)
Other[20]	7 (7%)
No reason given	5 (5%)
Children in TFC placements who received a *reauthorization* of TFC services	**10***

Source: Analysis of data submitted by HSD on December 12, 2023 and January 31, 2024.
* Includes two of the 23 children for whom CYFD submitted new requests for TFC services (their new services began and were reauthorized within the period in question) and eight additional children who received reauthorizations for existing services.

Although required by the CAP, the State did not provide the Co-Neutrals with quarterly data on the total number of TFC homes. In information provided by CYFD to San Juan community pilot members in February 2024, CYFD reports that as of mid-January 2024, there were nine active TFC providers with a total of 189 TFC homes statewide. This data has not been validated by the Co-Neutrals.

The Co-Neutrals spoke with four TFC providers in late 2023 to discuss current strengths and challenges in providing TFC services. They all expressed concerns with the shrinking capacity of

[20] Such as "Age criteria not met" or "Clinical criteria not met."

this service across the state and were unable to identify specific strategies that the State was implementing to prevent further loss. Themes from these conversations are bulleted below:

- Similar to CYFD, TFC providers are also experiencing challenges in recruiting new resource home providers, and they have lost previously licensed TFC providers due to reported challenges in working with CYFD.
- In order to support more TFC homes, private agencies report needing additional capacity and staffing within their agencies, specifically treatment coordinators and therapists.
- Placements in TFC are based on whether the service is clinically appropriate for the child and if there is a therapeutic match with an available home. Providers report that they decline placement if they do not have a home that is a therapeutic match with the child. However, providers express that if there were more TFC homes, there would be a larger pool from which to match children with an appropriate and available home.
- Lack of available and supportive community-based services in rural communities throughout the state was cited as a challenge to TFC placements. Agencies indicated TFC families are hesitant to accept children with challenging needs and behaviors if they do not have the supports necessary to successfully care for the child.
- Agencies cited interpretation and application of the Every Student Succeeds Act (ESSA)[21] as a significant roadblock to finding TFC placements for children. Providers and other stakeholders report that when a therapeutic match is identified, it could be outside of the transportation zone of the child's school of origin and require significant transportation support, resulting in the home not being selected as appropriate. Despite many reported meetings among CYFD and providers to address and resolve this issue, there has not been any reported progress.

4. Behavioral Health Services (FSA DTO3)

CAP Commitments:

a. HSD and CYFD will double the number of High-Fidelity Wraparound (HFW) sites from 10 to 20.
b. HSD and CYFD will double the number of HFW facilitators from 26 to 52.
    a. 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.
c. 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

[21] NM's State Plan for the Every Student Succeeds Act can be found here.

training, and 2) a Medicaid provider enrollment report to reflect the number of enrolled HFW providers.

d. [HSD and CYFD will provide the Co-Neutrals and the Plaintiffs with] a final report [on HFW] to be provided on January 15, 2024 reflecting the status as of January 1, 2024.

Data and Discussion:

The State provided the following data and materials regarding the expansion of High-Fidelity Wraparound (HFW) services between July 1, 2023 and December 31, 2023: facilitator training logs as of October 1, 2023 and January 1, 2024; lists of HFW providers enrolled and active with Medicaid as of October 1, 2023 and January 1, 2024; and information on facilitator training and certification requirements.

According to data provided by the State, there are 11 active HFW sites in New Mexico as of January 1, 2024, operated by nine total HFW providers. In terms of trained facilitators, there are 35 certified HFW facilitators as of January 1, 2024, with three additional Facilitators-in-Training expected to be certified by the end of the first quarter of 2024. Seventeen additional HFW Facilitators-in-Training are still completing their certification training, which generally takes between six months to one year to complete. Facilitators-in-Training are able to provide HFW services to families under the supervision of a HFW coach prior to being certified after completing some of the required foundational training.

To collect additional information regarding the State's expansion of HFW, the Co-Neutrals spoke with various stakeholders who have experience with the service, including multiple HFW agencies, CYFD staff, staff from the NMSU Center of Innovation (COI), and resource parents. Many providers and staff spoke about the challenges faced due to a lack of available and appropriate staff to hire and train to provide HFW. HFW requires a lengthy training and certification process, and with the current turnover rates behavioral health providers are experiencing, there are concerns about the sustainability of training staff who in turn leave the agency within a short period of time. It was also shared that some providers have difficulty accessing training when they hire new staff, as new staff may wait weeks or longer before being able to begin the training process. The delays in access to training and staff costs that cannot be billed for hired staff who are waiting for training or are in the training/certification process are an additional financial burden for HFW provider agencies.

Providers also expressed frustration with the roll-out process once HFW became a Medicaid-billable service, and many had concerns regarding the change in requirements to be a HFW coach. Specifically, the change requiring a Bachelor's degree for HFW coaches was identified as a barrier to expanding HFW services. Providers in different areas of the state expressed disappointment over the lack of referrals from CYFD, and noted that there appears to be staff confusion regarding

the differences between HFW and the newly implemented Individualized Planning Process (IPP) Meetings conducted by CYFD.

5. Critical Incident Review (FSA BTO2, 3, 4)

CAP Commitments:

a. 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…...The Co-Neutrals will provide information quarterly to Plaintiffs which will at minimum detail numbers of CIR by type.

Data and Discussion:

The CAP defines critical incidents as any situation that occurred for a child placed in a hotel/motel, CYFD office, out-of-state facility, shelter, or congregate care facility in New Mexico that results in either a 911 call, an allegation of harm, an allegation of abuse and/or neglect, an allegation of restraint/seclusion, or a change in licensure of a facility. The State is required to notify the Co-Neutrals in writing that a critical incident occurred within one business day of the incident.

The State provided the Co-Neutrals with documentation of 58 Critical Incident Reports (CIRs) for critical incidents that occurred between July 1, 2023 and January 5, 2024.[22] The Co-Neutrals previously provided two quarterly detailed summaries of the CIRs received to the Parties; the summaries are attached to this memo with redactions to protect child confidentiality.

The 58 CIRs reviewed by the Co-Neutrals involved 29 unique children, with many children involved in multiple incidents. The majority of CIRs (49 out of 58, or 84%) document incidents that occurred at a CYFD office (including the Receiving Center), with the remaining incidents occurring in a kinship home, out-of-state residential treatment center (RTC), and in-state RTC. Most critical incidents were 911 calls (45 out of 58 CIRs, or 76%) made regarding an incident at a CYFD office.[23]

[22] Most of these critical incident notifications were provided by CYFD to the Co-Neutrals within a short time following the incident. During the Co-Neutrals' case record reviews of children's placements in offices and shelters in CY2023, the Co-Neutral team identified seven possible critical incidents documented within children's case records for which a CIR report was not initially submitted by CYFD to the Co-Neutrals. The Co-Neutrals requested information from the State regarding these incidents on February 8, 2024, and as of February 22, 2024, CYFD has submitted two additional CIRs based on their review of children's records; these critical incidents are included in the data analysis in this section. The Co-Neutrals continue to await a response on the other five potential critical incidents.

[23] Two CIRs categorized as 911 calls were for children staying in either a kinship home or an in-state RTC. All other CIRs marked as 911 calls occurred for children housed in a CYFD office. One CIR was categorized as both a 911 call and an allegation of harm (toward staff).

Table 4 outlines the CIRs reviewed by the Co-Neutrals.

Table 4: Summary of Critical Incidents Reviewed by the Co-Neutrals

Month Critical Incident Occurred	Type of Critical Incident Reviewed					
	Number of 911 calls	Number of Allegations of Harm[24]	Number of Allegations of Abuse and/or Neglect	Number of Allegations of Restraint/Seclusion	Number of Changes in Licensure of a Facility	Total
July 2023	5	0	0	0	0	5
August 2023	7	1	1	1	0	10
September 2023	12	2	0	2	0	16
October 2023	6[25]	0	0	1	0	7
November 2023	5	2	0	1	0	8
December 2023	9	0	0	0	0	9
January 2024	1	1	0	1	0	3
Total	**45**	**6**	**1**	**6**	**0**	**58**

Source: CIRs provided by CYFD and case records reviewed by the Co-Neutrals

6. Joint Powers Agreement and Tribal Resources (FSA Appendix C)

CAP Commitments:

a. 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.
b. 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.
c. 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.

[24] Five out of six allegations of harm appear to be alleged harm against staff, not against the identified child in each CIR reviewed.
[25] One CIR was categorized as both a 911 call and as an allegation of harm (toward staff). For the purposes of this review, it is counted here only in the 911 category.

Discussion:

The CAP states that CYFD will inform the Co-Neutrals of the status of Joint Power Agreements (JPAs) with the explicit knowledge and permission of those Nations, Pueblos, and Tribes. CYFD has informed the Co-Neutrals that they have received permission from three Pueblos to share this information. As of this writing, no new JPAs have been executed.

Between July and December 2023, CYFD reports that the Office of Tribal Affairs (OTA) met at least once with 10 separate Nations, Pueblos, and Tribes to discuss JPAs.

7. Well-Child Visits (FSA DTO4)

CAP Commitments:

a. 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.
b. 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.

Data and Discussion:

Pursuant to the CAP, HSD issued LOD #96 titled "Comprehensive Well Child Checkups for Children in State Custody (CISC) Within 30 Days" on June 30, 2023.[26] LOD #96 outlines the responsibilities and reporting requirements of MCOs to ensure all children in state custody have a well-child checkup within 30 days of entering care.

CYFD reported the agency hired a full-time EPSDT coordinator in June 2023 to assist in facilitating the completion of well-child visits. CYFD also reported it is working on a Memorandum of Understanding (MOU) with the Department of Health to assist in getting well-child visits completed.

The State provided the Co-Neutrals with a preliminary list of children who entered care each month from January through November 2023, as well as a list of children in care on September 15, 2023 who had entered care prior to 2023.[27] From these lists, the Co-Neutrals selected a random sample

[26] LOD #96 can be found here.
[27] As required by the CAP, beginning in September 2023, the State provided preliminary monthly well-child performance data on the 5th day of the following month of when the visits were due (for example, the July 2023 performance data was provided to the Co-Neutrals on September 5, 2023.)

of children to review,[28] and requested documentation to verify completion of a well-child visit from the State for each child in the sample. In response to the Co-Neutrals' sample requests, the State provided appointment documentation, and preliminary billing data provided by HSD.

To assess timeliness, the Co-Neutrals removed from analysis children in the pre-July 2023 sample who entered care before January 1, 2023, as the State provided records for these children's most recent well-child visit prior to September 15, 2023, and not for the first well-child visit the child received after they entered care which may have been 12 or more months prior. The Co-Neutrals reviewed the number of days between a child's date of entry and the date of well-child checkup on records provided by the State. Due to the preliminary nature of the billing data, the Co-Neutrals did not consider the submission of HSD billing dates without corroboration from additional medical record documentation for the purpose of CAP data validation.[29]

To assess completeness, the Co-Neutrals reviewed children's medical records provided by the State to determine whether required and applicable[30] elements of a well-child visit were documented. Required elements were derived using the criteria from HSD's Keeping Kids Healthy website,[31] which lists the required elements as: medical history; measurements of height, weight, and BMI; unclothed physical examination; nutrition screening; vision and hearing screenings; developmental/behavioral assessment; hematocrit/hemoglobin at nine months and 13 years; lead screening at 12 months and 24 months; immunizations; selective screenings necessary according to risk factors;[32] and anticipatory guidance.[33]

[28] The Co-Neutrals selected random samples of 50 percent of the children in each of the monthly cohorts (not to exceed 25 children) to verify completion of well-child visits consistent with the CAP. For the pre-July cohort, the Co-Neutrals selected a 10 percent stratified sample, with half of the sample from children who entered care between January 1 and June 30, 2023, and half of the sample from children who entered care before January 1, 2023.

[29] The *Kevin S.* DVP metric for this FSA commitment specifies applicable billing codes providers may use to identify whether a medical appointment should be considered as a well-child visit, however, this level of detail is not yet available due to the preliminary nature of the data. HSD confirmed to the Co-Neutrals that HSD provided only those billing dates consistent with the applicable billing codes as agreed upon in the DVP.

[30] All elements listed within HSD's Keeping Kids Health guidance for well-child visits are not required for every child at every well-child visit, depending on the child's chronological age. To assess applicability of required elements, reviewers referred to the NM Periodicity Schedule, which can be found here, and NM's Medical Assistance Division's Recommended Behavioral/Developmental Assessment poster, which can be found here.

[31] HSD's Keeping Kids Healthy website can be found here.

[32] During the course of their evaluation, providers may identify risk factors for children for which they are then expected to complete additional screenings. This may include a Tobacco, Alcohol, or Drug Use Assessment if the child demonstrates behavior that may put them at risk for drug use, or STI testing due to sexual behavior. Additional information on screening for risk factors can be found here and here.

[33] Anticipatory guidance is given by the health care provider to assist parents, guardians, or caretakers in the understanding of the expected growth and development of children. Anticipatory guidance, specific to the age of the patient, includes information about the benefits of healthy lifestyles and practices that promote injury and disease prevention. This guidance may be given in the form of a handout or verbally. Additional information on anticipatory guidance can be found here.

At this time and with the information available, the Co-Neutrals are unable to validate whether requirements outlined in the LOD have occurred. **The data provided by the State do not indicate that all children in state custody received a completed well-child visit within 30 days of entering care.** Specifically, the Co-Neutrals found that:

- The State was able to produce records to verify completion of a well-child visit for 36 percent (108 out of 303) of the records requested by the Co-Neutrals.[34]
- Of the 86 records reviewed for a sample of children who entered care in 2023, a well-child visit occurred within 30 days of entry for 74 percent of those children (64 out of 86 records reviewed).[35]
- All required and applicable elements of a well-child checkup were documented for 51 percent of children in the reviewed sample (55 out of 108 records reviewed).[36] Of the remaining 53 records reviewed, 52 showed documentation of at least two or more of the required well-child checkup elements, while one record showed documentation of only one required element.[37]

During the Co-Neutrals' site visits to CYFD county offices in September 2023 and January 2024, CYFD staff identified barriers they have experienced in scheduling and completing well-child appointments for children on their caseloads. Staff expressed there is often role confusion over who is responsible to schedule and facilitate well-child visits, particularly for children whose appointments might be made by the investigation worker prior to the child being assigned to a PPW. While some workers reported receiving reminders to schedule well-child appointments from the EPSDT coordinator, the lack of available providers in certain parts of the state makes scheduling an appointment in a timely manner challenging.

[34] The total number of records requested (303) includes records requested for children who entered care prior to January 1, 2023 who remained in care as of September 15, 2023. The State advised that some records were not produced in time to provide the documentation to the Co-Neutrals within the five-day turnaround period, and some records were not produced at all. The State also stated that some caregivers and youth over the age of 14 had not consented by signed release for providers to send the records to CYFD, which the State described as a cause of some records not being produced.

[35] The Co-Neutrals reviewed timeliness only for children in the sample who entered care after January 1, 2023 (215 of 303 entries in the full sample) for whom the State was able to produce records to verify completion of a well-child visit (86 of the 215 children in the sample who entered care after January 1, 2023). The Co-Neutrals did not examine timeliness for the 88 children in the full sample who entered care before 2023 as the records provided by the State may not have reflected the first well-child visit the child received after entering care.

[36] The Co-Neutrals reviewed the completeness of well-child visits for all children in the sample for whom the State was able to produce records to verify completion of a well-child visit – including records provided for children who entered care prior to 2023, for a total of 108 records reviewed.

[37] The Co-Neutrals identified quality issues with some of the records provided which impacted validation efforts. For the July and October 2023 medical record submission, in some instances, the State produced documentation for dental, vision, or sick appointments rather than well-child appointments. In other instances, the documentation provided included records on a CYFD form presumably completed by the provider detailing what was discussed and assessed during the visit. There were also multiple instances where the records submitted appeared to be missing pages which may have provided additional information on what well-child elements occurred during the visit.

Further detail on the Co-Neutral's verification process is provided in the initial update shared with the Parties on December 6, 2023.

8. Data Submissions

CAP Commitment:

a. 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 outlined in CAP.

Discussion:

The Co-Neutrals have received most data identified in the CAP from the State. Some of the provided data required additional clarification or structuring, and the data were not consistently provided within the timelines outlined in the CAP. As of this writing, the Co-Neutrals have not received all medical necessity determination information for new in-state and out-of-state clinical congregate care placements nor quarterly data on the total number of TFC homes despite repeated requests from the Co-Neutrals.

***

The CAP was intended to address previously noted deficiencies and areas where progress has lagged. Overall, this has not occurred in a meaningful way. Further, as identified in the Co-Neutrals' January 26, 2024 letter to the Parties, there are urgent, critical issues threatening child and worker safety which undermine the ability of the State to implement its *Kevin S.* commitments in good faith. We urge the State to address those issues immediately.

Sincerely,

Judith Meltzer
Center for the Study
of Social Policy

Kevin Ryan
Public Catalyst

cc: Julie Sakura, General Counsel, CYFD
Mark Reynolds, Chief General Counsel, HSD
Alex Castillo Smith, Deputy Cabinet Secretary, HSD

Mark Velarde, PS Director, CYFD
Farra Fong, Deputy Director, CYFD
Jennifer Archuleta-Earp, Program Deputy Director, CYFD
Sarah Meadows, Performance and Accountability, CYFD
Kathy Kunkel, Consultant, CYFD and HSD
Bianca Foppert, Change Implementation Coordinator, CYFD
Sally Jameson, Project Manager, Office of the Secretary, HSD

Attachments:
2 2024 Attachment 1.pdf
2 2024 Attachment 2.pdf

EXHIBIT F

THE PUBLIC INTEREST LAW OFFICE OF THE LOS ANGELES COUNTY AND BEVERLY HILLS BAR ASSOCIATIONS
The Southern California Affiliate of The Lawyers' Committee for Civil Rights Under Law

March 5, 2024

Via Email and U.S. Mail

Teresa Casados, Cabinet Secretary
Children, Youth and Families Department
State of New Mexico
P.O. Drawer 5160
Santa Fe, NM 87502-5160

Kari Armijo, Cabinet Secretary
Health and Human Services Department
Office of the Governor
490 Old Santa Fe Trail, Room 400
Santa Fe, NM 87501

Re: ***Kevin S., et al. v. Blalock, et al.*, No. 1:18-cv-00896**
Non-Compliance with the June 30, 2023 CAP

Dear Secretary Casados and Secretary Armijo:

More than three years into the Final Settlement Agreement ("Settlement") in *Kevin S. v. Blalock, et al*, the Co-Neutrals' reports and memos have consistently documented the State's pervasive failures to meet its obligations. Most recently, on February 23, 2024, the Co-Neutrals wrote to provide the parties with information regarding the State's purported implementation of selected commitments contained in the June 23, 2023 Corrective Action Plan ("CAP"). The information provided by the Co-Neutrals confirms that CYFD and HSD have failed to comply with significant CAP commitments.

Plaintiffs are committed to holding CYFD and HSD responsible for their promises to implement the Settlement and CAP and to building a child welfare system that incorporates the changes promised in those covenants. In order to ensure that we have the necessary information to inform our decisions regarding how to best enforce the Settlement and CAP, we request that CYFD and HSD provide the Plaintiffs with the State's position regarding the Co-Neutrals' findings. For any finding that CYFD or HSD believes is inaccurate, please provide us with the basis and the information supporting the State's position.

In addition, if there is information that was not provided to the Co-Neutrals, either information due to the Co-Neutrals under the CAP or new information regarding CAP implementation, we request that the information be provided to Plaintiffs and the Co-Neutrals.

CYFD and HSD have asserted that they are dedicated to implementing *Kevin S.* The Settlement and CAP underscore the importance of accurate and transparent data to inform determinations regarding the State's performance. In this spirit, and to avoid unnecessary further disputes, we request that you provide us with the requested information no later than March 11, 2024.

Thank you in advance for your prompt attention to this matter. We look forward to the State's response.

By PUBLIC COUNSEL

Tara Ford
Amelia Piazza

By MARTINEZ, HART, SANCHEZ & ROMERO

F. Michael Hart

By: BARNHOUSE, KEEGAN, SOLIMON & WEST

Christina S. West

Counsel for Plaintiffs Kevin S., et al.

Cc:
Judith Meltzer & Kevin Ryan, Co-Neutrals

EXHIBIT G

Children, Youth & Families Department
STATE OF NEW MEXICO

HUMAN SERVICES DEPARTMENT

March 12, 2024

Via Electronic Mail

Tara Ford
Amelia Piazza
Public Counsel

F. Michael Hart
Martinez, Hart, Sanchez & Romero

Christina S. West
Barnhouse, Keegan, Solimon & West

Re: *Kevin S, et al. v. Blalock, et al.*, No. 1:18-CV-00896
Non-Compliance with the June 30, 2023 CAP

Dear Counsel,

This letter is in response to your letter dated March 5, 2024 concerning the Co-Neutrals' letter of February 23, 2024. Our response follows the format of the March 5th letter and is as follows:

1. CYFD Workforce Caseloads (FSA BTO10)

The State is committed to steady progress in addressing issues with the quality of caseload data. These efforts include:

- Continue to improve data quality through regular calculation of caseloads across case types and updating personnel data.
- Accessing a more reliable list of temporary/contractor staff who are helping counties with especially high caseloads and staff shortages (many of whom are former employees). If unable to identify staff, it causes more unaccounted cases in the analysis.
- Proper documentation of secondary assignment of cases so data does not reflect new workers carrying cases. This assignment will allow these workers as secondary assignees to access the case as part of their training process.
- As the state continues to hire and onboard new staff, we should see better compliance with graduated caseload standards, and with caseload compliance more generally.
- Supervisors and managers will be directed to ensure all case assignments are properly reflected in FACTS.

- The Co-Neutrals' wrote "*Some staff agreed on reported caseload assignments, and others reported meaningful discrepancies between their understanding of their caseloads and the counts reflected in FACTS*" the State is requesting information to determine how to address the caseload discrepancies.

2. Family Based Placements (FSA BTO6)

The state agrees with the Co-Neutrals' statements regarding family-based placements. The following actions are underway to improve compliance with BTO6 :

- There are many reasons for the discontinuation of a relative license. In general, a relative license is obtained for a specific child(ren) and is often short-term.
- The net loss of 27 non-relative foster homes is concerning to CYFD. CYFD is utilizing the same strategy with foster families as with its employees, including stay interviews, exit interviews, continual training, peer support and reestablishing respite foster care.
- The state will continue to track licensing and retention of non-relative foster homes, including those which are successful conversions of relative homes. These homes are of particular interest, as they require less onboarding and training efforts, although they will still require significant support. In order to better understand the impact these families have on foster home needs within each community, CYFD will track placement patterns among these "dually licensed" providers to see if, generally speaking, the conversion strategy is effective in meeting the needs of children in the community.
- The state will continue to work with a contractor implementing a spider-web referral model. After working with the contractor to assess the certification process, procedures, and data, the state now has the foundation needed to continue with this strategic referral model. This strategy is underway as several resource parents have volunteered to host these referral meetings.
  The state will also continue to implement internal recruitment and retention strategies. These recruitment events are ongoing and have resulted in 94 inquiries in January and 102 inquiries in February.
- Because of staffing vacancies, the assigned placement worker for the five counties did not take place during the designated time. However, the State has since made these appointments. They include:

  Bernalillo – Stephanie Gallegos
  Dona Ana – Sabrina Gabaldon
  Santa Fe – Arlene Riboni
  San Juan – Patricia Hale
  Chaves – Lori Hicks

- CYFD has established specific pillars, one concentrating on placement. This team is focusing on strengthening the county-based recruitment plans and providing technical support for execution of these plans.

3. Treatment Foster Care (FSA BTO6)

While the state does not dispute the findings from the tracking process described, the state's data system indicates that 82 children were placed in TFC between August 15th, 2023 and December 31, 2023. Some of these placements were quite short in duration (i.e., fewer than 30 days, N=27) and many were likely not tracked through the new MCO approval process if authorization was sought before this process went into effect. Since CY 2020, around 250 children are placed in TFC each year, which admittedly is a decline from prior years (an average of 380 per year from 2017-2019). Between the 10 TFC agencies in New Mexico, there are a total of 189 TFC Homes (with various bed capacities).

4. Behavioral Health Services

- As of January 2024. There are eleven (11) sites operated by eight (8) providers.

ACTIVE PROVIDERS	COUNTY SITE
All Faiths	Bernalillo
All Faiths	Valencia
Mental Health Resources	Roosevelt
Mental Health Resources	Curry
Guidance Center	Lea
New Day	Bernalillo
Desert View	San Juan
Desert View	McKinley
La Casa	Chaves
UNM-HSC	Sandoval
FYI+	Dona Ana
TOTAL	**11**

- Regarding the number of HFW facilitators, below are the numbers as of January 2024:

Certified Wraparound Facilitator	35
Credentialing Anticipated in Q1	3
Still in Training/ Credentialing Past Q1	17
TOTAL	**55**

The HSD LOD states: "Wraparound Facilitators must be certified or be actively enrolled as a FIT to begin serving families. Wraparound facilitators must also be certified in Wraparound by the NMCBBHP between 6 to 12 months from completing the "Foundations of Wraparound Practice" training;"

Ongoing Efforts to Improve the Program:

In FY'24, CYFD executed a four (4)-year Intergovernmental Agreement (IGA) with the NMSU COI to support HFW provider and workforce development. This IGA supports the following:

- Along with the CYFD BHS HFW team, training has been provided to Wrapround staff regarding all aspects of the HFW model. NMCOI provides coordination and tracking of all HFW trainings.
- Endorsed coaches to support current and future HFW providers.
- Positions to help support the expansion of HFW.
- HFW Facilitator tracking sheets to track educational requirements for HFW Facilitators.
- Contracting with and coordination/tracking of HFW Certification through the New Mexico Credentialing Board for Behavioral Health Professionals (NMCBBHP).
- Updates to the NMSU COI website to include HFW provider inquiries:

https://centerofinnovationnm.org/nm-wraparound/wrap-provider-application/wrp-provider-interest/

- CYFD BHS HFW team will continue to hold outreach events to meet and train on HFW with providers who inquire about HFW, and to help generate referrals in current HFW provider locations. They will discuss with prospective providers the structural requirements in the HFW implementation plan and Medicaid rate.

- The CYFD BHS HFW team will meet with the providers who submitted a letter of interest to become a Wraparound Provider.

- In SFY'24, CYFD BHS allocated State General Funds to contract with the vendor It Takes a Village to support current and future HFW providers with a sustainability/business plan in sustaining and/or becoming a HFW provider.

<u>Regarding the hiring of staff and training:</u>

- The challenges of hiring staff do not appear to be specifically related to the HFW program, but rather a statewide workforce situation. The HFW program was intentionally selected as it does not require licensed clinicians to serve as Facilitators, allowing for a range of experience and education.
- BHS is not aware of Provider concerns related to "lengthy" trainings. Ongoing training is necessary to be considered a high-quality and "high-fidelity" model and is necessary to become a credentialed position with the New Mexico Credentialing Board for Behavioral Health Professionals. All training is based upon national technical assistance CYFD received while developing the NM HFW model. The training requirements were included in the rate development process with Mercer and HSD, so the current Medicaid rate includes the lost productivity that occurs when Facilitators attend these trainings.
- BHS is not aware of provider difficulty accessing training, especially for new hires. Since FY'21, BHS has scheduled training in advance for the entire year on the NMSU COI's website to allow providers to align hiring with the scheduled training. BHS offers "Contingency Trainings" for when a Facilitator is hired in between Foundations trainings to begin the engagement process with youth and families, prior to completion of the Foundations Training and formal assignment. BHS also schedules or reschedules Foundations Training if the need is there.
- From BHS' experience, some HFW Providers require internal on-boarding training before sending them to Foundations that can be up to thirty (30) days. Other Providers have hired a Facilitator on Friday and sent them to Foundations Training the following Monday. BHS works closely with HFW Providers to coordinate training that meets their staffing needs.

- Below are the dates of Foundations Trainings provided in FY'23 and FY'24:

  July 11-15, 2022
  October 24-28, 2022
  December 21, 2022 (Contingency Training)
  January 23-27, 2023
  May 24, 2023 (Contingency Training)

July 17-21, 2023
October 2-6, 2023
December 11-15, 2024 (Cancelled due to not enough registrations)
January 22-26, 2024
March 19-22, 2024 (planned)
May 21-24, 2024 (planned)

Providers are concerned about changes (requiring a bachelor's degree) in requirements to be a HFW coach:

- Provider questions/concerns regarding changes in requirements to the HFW coach have been raised to both HSD and CYFD BHS. HSD MAD has taken those concerns to CMS; a response is pending.
- In July 2023, BHS immediately began funding the two providers that did not transition to Medicaid because of this reason.
- There appears to be confusion between HFW and IPP process.
- Regarding any confusion between HFW and IPP process, the expectations of the HFW Facilitator and team meetings are clearly delineated in the HFW Program Manual and training.

Additional Program Improvement efforts:

- CYFD-BHS has contracted with the New Mexico State University Center of Innovation (NMSU-COI) to hold periodic Quality Service Reviews (QSR) at HFW sites. Current efforts based upon recent QSR findings include:
- In the fall of 2023, CYFD BHS began working with Providers statewide to evolve the monthly coordination meeting to increase review by program expectations data, including referrals, enrollment, and capacity rates. CYFD-BHS will provide technical assistance when these data points are below best practice benchmarks.
- CYFD-BHS is implementing training for supervisors, through its coaching model, on the use of data to monitor program implementations expectations. This training includes regular pulls of data from the Wraparound databases, specifically referrals, enrollment, and practice expectations. CYFD-BHS, in partnership with NMSU-COI and the UNM Evaluation team, is also reviewing and will then adapt its training regarding evaluation and data collection.

5. Critical Incident Review (FSA BTO2,3, 4)

CYFD acknowledges the need for improvement in identifying, reporting, and addressing critical incidents. We have drafted and are finalizing a directive regarding critical incident reporting which will be provided to the Co-Neutrals on Thursday, March 14th for review. The following actions are underway to improve compliance with BTO2,3,4.

We continue to meet with our partners to include Treatment Foster Care providers to develop a more robust and appropriate placement option for difficult to place youth (including our youth who are in congregate care settings).

6. Joint Power Agreement and Tribal Resources (FSA Appendix C)

CYFD essentially agrees with the statements regarding JPA and Tribal Resources, however, CYFD further states that the following actions demonstrate compliance with FSA CAP Appendix C:

- CYFD did reach out and met with the five New Mexico N/P/Ts with most children in state custody. During the CAP period CYFD sought to meet with all remaining New Mexico N/P/Ts and those efforts continue. During discussions with all N/P/Ts on JPAs, the discussion items identified in the CAP are raised by the state. OTA has received permission from 3 N/P/Ts to disclose information regarding JPA negotiations with the Co-Neutrals and has provided the same permission to the Co-Neutrals.
- CYFD has revised its licensing standards effective January 2024 and the same are publicly available at https://www.cyfd.nm.gov/policies/.
- OTA is in discussion with N/P/Ts on a recruitment and retention plan(s) that centers Native children, family, and community.
- OTA is the primary facilitator of OOPP meetings and gathers feedback at weekly meetings. CYFD's OOPP policy was revised and made effective December 1, 2023. The first level review is carried out weekly on Mondays and Thursdays and upstaffings with leadership from OTA and PS occur weekly on Mondays.
- A pilot is underway and a written template for access to financial resources is in progress at CYFD. Feedback on the same is solicited weekly at standing meetings with N/P/T representatives. CYFD has reviewed administrative barriers regarding access to funds and are pending resolution in the final template mentioned above.
- CYFD provides N/P/Ts with free access to all Workforce Development training provided to CYFD staff as well as CYFD's trauma training. CYFD also sought to make funding through Title IV-E, Title IV-B, and State General Funds available to N/P/Ts. CYFD is offering, through available channels, funding to two (2) interested N/P/Ts for activities to include culturally responsive home studies. To date, no additional requests for funding from interested N/P/Ts have been received by CYFD.
- CYFD created a process for N/P/Ts to request data, but no requests have been received to date. OTA continues to send quarterly data to all N/P/Ts.
- OTA and PSD meet monthly, and the PSD director joins quarterly.
- OTA sent a report to the Co-Neutrals on barriers to timely notification on November 1, 2023. CYFD has also implemented Pre- and Post-Initiation

staffing forms including solicitation of information on whether a child is a member of an N/P/T or if there is reason to know.

- Finally, CYFD and HSD hosted an event on November 28, 2023, to provide N/P/Ts an opportunity to learn more about *Kevin S.*, its deliverables, and an invitation to both Plaintiffs and the Co-Neutrals was extended.

7. Well- Child Visits (FSA DTO4)

Generally, the state agrees with the statements the Co-Neutrals have made regarding well-child visits. However, as the Co-Neutrals did not consider HSD billing or service dates provided (data used under the Data Validation Plan for the Annual Report) and as the state had late data entries, the state counts are slightly inconsistent with the numbers reported by the Co-Neutrals.

As noted by the Co-Neutrals, the state did hire an EPSDT Coordinator and has been working with the Department of Health since late summer 2023 including establishing a Memorandum of Understanding with the Department of Health. The State has also begun to track at more frequent intervals data surrounding well-child visits for children in care for 30 days or longer. Consistent practice has remained a challenge statewide, although HSD has seen progress toward compliance month over month since implementation of the CAP.

8. Data Submissions

The State agrees with the Co-Neutrals. Due to technical difficulties, not all medical necessity determination documentation for new in- and out-of-state congregate care placements has been provided. However, at the time of writing those issues have been resolved and the state has provided most documentation requested. CYFD produced TFC home numbers for the Co-Neutrals earlier this year and is in the process of working with TFC agencies to be able to provide 2023 TFC home numbers for quarters 3 and 4.

We encourage continued conversations to ensure the safety and wellbeing for all New Mexican children.

Very truly yours,

DocuSigned by:
Teresa Casados
FE355BED9AF5442...
Teresa Casados, Cabinet Secretary
Children, Youth and Families Dept.

DocuSigned by:
Kari Armijo
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Kari Armijo, Cabinet Secretary
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