



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

September 22, 2023

Via Email and U.S. Mail

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

Kari Armijo, Acting 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
Demand to Cure Non-Compliance with the June 30, 2023
Corrective Action Plan**

Dear Interim Secretary Casados and Interim Secretary Armijo:

We are in receipt of correspondence from the Co-Neutral's Team dated September 18, 2023 and earlier letter dated September 27, 2022, collectively attached as Exhibit A. The chaos of the child welfare system and the dire harms facing children in State custody described in their correspondence is matched or exceeded by our investigation and experience. There can be no doubt that children in State custody in New Mexico are being harmed due to the failure of CYFD to comply with its repeated promises to reform the child welfare system, reform which requires a continuum of services provided in partnership with HSD. Both agencies completely and utterly have failed to perform. As the Co-Neutrals make plain, we are in a state of emergency and children coming into the State's custody and care are entering a system that is even more broken than it was last year.

This letter notifies you that CYFD and HSD are in breach of the June 30, 2023 Corrective Action Plan, signed and negotiated by both of you on behalf of CYFD and HSD. Given this breach, we demand immediate and specific written assurances that your agencies will come into compliance with the June 30, 2023 Corrective Action Plan (2023 CAP), specifically performing all agreed upon commitments. *See* 2023 CAP, attached here as Exhibit B. In the event that you do not provide us with acceptable written assurances by the close of business on October 6, 2023, we will consider CYFD and HSD to be in breach of the 2023 CAP and immediately will request arbitration. Acceptable written assurances will include the specific actions the State intends to take to come into compliance with the 2023 CAP, the timeline for each action, the person responsible for each action, and person responsible for ongoing written reporting to Plaintiffs' counsel that each action has been timely completed.

In order for CYFD and HSD to avoid arbitration, you must provide the following assurances:

First, CYFD will cease all hiring freezes, pauses or other delay tactics that impede CYFD from meeting the Department's obligations to make progress towards meeting caseload standards as agreed to in the 2023 CAP. In addition, CYFD must comply with the caseload standards agreed to in the 2023 CAP. CYFD must provide specific written assurances as to the steps the Department will take to come into compliance with the agreement by December 31, 2023.

Second, CYFD must address its commitment to a public/private strategy to recruit and retain resource families. CYFD needs to provide detailed documentation that assignment of staff as agreed to in the Corrective Action Plan is in place and that staff are not being tasked with other departmental duties. In addition to specific performance of the agreed upon staffing, CYFD must stop impeding the efforts of the professionals by failing to devote necessary resources to support these positions. Specifically, CYFD needs to provide written assurances of actions that will be taken to ensure: 1) home studies are complete; 2) other resources are available as needed to allow persons assigned to effectively perform their work; and 3) effective supervision is provided to them to meet the obligations in the 2023 CAP. CYFD needs to provide information on the status of the contracts with private providers for resource family recruitment and assurance that these contracts are in place as required by the 2023 CAP.

Third, our independent investigation and experience representing children in State custody demonstrates that HSD is not ensuring MCO provision of TFC placements, including consideration of single case agreements, for children in State custody. HSD must specifically perform this term of the agreement and provide written assurances regarding its compliance with its obligation to have a reliable system to immediately (within 5 days) identify alternative services for children recommended for TFC when those placements have been denied, reduced, modified or delayed. The failure to have an adequate network of care is directly related to the extraordinary time spent by CYFD staff who are supposed to be finding placements for children who are now in inappropriate placements, abandoned in offices and relegated to out-of-state placements. Despite meeting multiple times weekly, often daily, the staff has proven unable to find foster homes or TFC providers willing to be the home base for children currently in inappropriate placements, especially when they require individualized services.

Fourth, our independent investigation has uncovered HSD's breach of its obligation to double the number of HFW facilitators from 26 to 52. We have been informed that providers are confused about the requirements for HFW Facilitator credentials and are concerned that existing HFW Facilitators may not meet recently imposed requirements – meaning that HSD has implemented requirements that will decrease the base number of existing HFW facilitators. HSD must provide immediate written assurances with actions necessary meet its obligations to double the number of HFW sites from 10 to 20 and to double the number of HFW facilitators from 26 to 52 by December 31, 2023.

Fifth, despite the known harm of improper placements, children are still being placed in offices. These children are not being provided with basic safety, privacy, or even minimally nutritious food. As the Co-Neutrals report, staff who are unprepared and untrained are being

tasked with supervising these office placements. The fact that children continue to be placed in offices where they are in such dire risk of harm, vividly demonstrates that CYFD has breached its obligation under the 2023 CAP to provide a safety plan for children subject to critical incidents. The 2023 CAP requires the safety plan to include steps with service and supports necessary to address the harm of all critical incident and steps to be taken to protect the child from such harm in the immediate future. We know first-hand that children harmed while in these dangerous placements are not provided with needed services and supports. CYFD and HSD must provide immediate written assurances of the actions the State will take to end all office placements. CYFD and HSD's written assurances must include actions taken to ensure that children's basic rights are not being violated when they are abandoned to office placements. At minimum, these assurances must ensure that children's basic rights are protected and enforced as set forth in NMSA §32A-6A-12. In addition, CYFD and HSD must provide the Co-Neutrals and Counsel for Plaintiffs with, *inter alia*, a daily list for each child in the office that includes:

- a) The name, position, and licensing of each staff supervising the child in an office, including but not limited to both direct care staff and supervisors;
- b) The total hours per individual staff/supervisor assigned to supervise the child in an office;
- c) The hours for all shift changes; and
- d) The overtime for each individual staff/supervisor assigned to supervise the child in an office

Sixth, while the Doña Ana County Pilot Project has had one meeting, the San Juan County Pilot Project still does not have a facilitator, nor has it yet met. The State must provide specific written assurances detailing how the State intends to remedy this breach of contract. We bargained for a specific length of time for each pilot project and we demand specific performance of the full nine months for each pilot. Both Departments must provide written assurances that the State will support each pilot for the full nine months.

Seventh, the State is in breach of its 2023 CAP obligations to include additional resources in the CYFD budget to support Nations, Tribes and Pueblos in New Mexico, who at their discretion choose to provide services for Native children in State custody. To be clear, the CYFD Office of Tribal Affairs has been diligent in its effort to comply with Appendix C obligations in the 2023 CAP. Yet, their efforts are undermined by the State's failure to allocate or seek resources to build capacity and to partner with Nations, Tribes and Pueblos to ensure that Native American children in State custody are connected to their communities. Specifically, the State is in breach of its obligation to make good faith efforts to negotiate Joint Powers Agreements and single case contracts with Nations, Tribes and Pueblos. Because these discussions have not occurred, CFYD and HSD budgets do not include additional funding that Nations, Tribes and Pueblos might request, additional funding which CYFD agreed to include in its budget requests under the 2023 CAP. The State must specifically comply with these agreements. We need to receive specific written assurances that demonstrate that the Governor's budget will include resources for JPAs and single source contracts with Nations, Tribes and Pueblos.

Eighth, HSD will be in breach of its agreement to ensure that 100% of children in State custody will receive a well-child visit within 30 days of entering custody by January 1, 2024. HSD must provide specific written assurances of steps that it will take to ensure compliance with this obligation.

Finally, CYFD and HSD have been on notice for the past 12 months that they have failed to live up to the promises and requirements of the *Kevin S.* settlement agreement. CYFD and HSD have continued to ignore these obligations and disregard the specific recommendations from the Co-Neutrals despite agreeing to the 2023 CAP meant to remediate past non-compliance. Given the litany of the Departments' abject failures and the current dangerous chaos impacting children in State custody, both CYFD and HSD must provide unequivocal written assurances that they are aware of, and that they fully will comply with, the recommendations provided by the Co-Neutrals in both their September 18, 2023 correspondence as well as those included in their correspondence from September 2022.

In light of the State's breach of the 2023 CAP, we do not believe that holding an All Parties meeting will be useful. If we do not receive acceptable written assurances setting forth specific actions the State will take and clear timelines for each action needed to come into compliance with the 2023 CAP by the close of business on October 6, 2023, we will request arbitration.

It is time for the State to live up to its promises. The clear failure of both CYFD and HSD to comply with the requirements to which they voluntarily agreed is harming the children that both of your Departments have an obligation to serve and protect.

By: PUBLIC COUNSEL

Tara Ford
Amelia Piazza

By: PEGASUS LEGAL SERVICES FOR CHILDREN

Bette Fleishman
Sara Crecca

By: NATIVE AMERICAN DISABILITY RIGHTS

Therese Yanan

By: DISABILITY RIGHTS NEW MEXICO

Gary Housepian
Jesse Clifton

By: MARTINEZ, HART, SANCHEZ & ROMERO, P.C.

F. Michael Hart

By: RODEY LAW FIRM

Andrew G. Schultz

Counsel for Plaintiffs Kevin S., et al.

Attachments: Exhibits A and B
Service List of New Mexico Tribal Leadership

cc: ***Via Email and U.S. Mail:***

New Mexico Governor, Michelle Lujan Grisham (*emailed through* General Counsel)
New Mexico Attorney General, Raúl Torrez
New Mexico Speaker of the House, Javier Martinez
New Mexico Senate President Pro Tempore, Mimi Stewart
Kevin Ryan and Judith Metzler, the Kevin S. Co-Neutrals Team
Julie Sakura, General Counsel for CYFD
John R. Emery, General Counsel for HSD

Via U.S. Mail (see full Service List, attached):

Navajo Nation, President Buu Nygren
Navajo Nation Council, Office of the Speaker
Jicarilla Apache Nation, President Edward Velarde
Mescalero Apache Tribe, President Eddie Martinez
Pueblo of Acoma, Governor Randall Vicente
Pueblo of Cochiti, Governor Everett P. Herrera
Pueblo of Isleta, Governor Max Zuni
Pueblo of Jemez, Governor Dominic Gachupin
Pueblo of Laguna, Governor Wilfred Herrera
Pueblo of Nambe, Governor Nathaniel Porter
Ohkay Owingeh, Governor Larry Phillips, Jr.
Pueblo of Picuris, Governor Craig Quanchello
Pueblo of Pojoaque, Governor Jenelle Roybal
Pueblo of San Felipe, Governor Carl Valencia
Pueblo de San Ildefonso, Governor Christopher Moquino
Pueblo of Sandia, Governor Stuart Paisano
Pueblo of Santa Ana, Governor Nathan Garcia
Pueblo of Santa Clara, Governor J. Michael Chavarria
Pueblo of Santo Domingo, Governor Esquipula Tenorio
Pueblo of Taos, Governor Gary Lujan
Pueblo of Tesuque, Governor Milton Herrera
Pueblo of Zia, Governor Valentino Pino
Pueblo of Zuni, Governor Arden Kucate
Ysleta Del Sur (APCG Member), Governor E. Michael Silvas
All Pueblo Council of Governors
Five Sandoval Indian Pueblos
Eight Northern Indian Pueblos Council

Via Email only:

NMTIC, President, Jacqueline Yalch

EXHIBIT A



Center for the
Study of Social Policy



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
Center for the Study
of Social Policy



Kevin Ryan
Public Catalyst

cc: Julie Sakura, General Counsel, CYFD
John Emery, Acting General Counsel, HSD
Alex Castillo Smith, Deputy Cabinet Secretary, HSD
Governor Perez, Special Projects Coordinator, CYFD
Farra Fong, Deputy Director, Fostering Connections Bureau, CYFD
Jennifer Archuleta-Earp, Program Deputy Director, CYFD
Sarah Meadows, Performance and Accountability, CYFD
Bianca Foppert, Change Implementation Coordinator, CYFD
Sally Jameson, Project Manager, Office of the Secretary, HSD

Attachment



Center for the
Study of Social Policy



H&A Hyde & Associates
Policy and Practice Consulting, LLC

September 27, 2022

Cabinet Secretary Barbara Vigil
New Mexico Children, Youth, and Families Department

Cabinet Secretary Dr. David Scrase
New Mexico Human Services Department

Via electronic mail

Re: Follow up from Co-Neutrals' September 2022 Site Visit and Suggestions for Swift Actions to Address Identified Issues

Dear Secretary Vigil and Secretary Scrase,

Thank you for the kind welcome you and your staff provided to the Co-Neutrals and the Co-Neutrals' team during our on-site visits. We greatly appreciated the ability to visit multiple CYFD offices and behavioral health and shelter providers, and found these visits invaluable to our work under the *Kevin S.* settlement. As we discussed during our meeting with you on September 15, 2022, the four major themes we encountered during our site visits centered around: (1) the CYFD Workforce, (2) Communication, (3) Placement, and (4) Behavioral Health Services. Below, please find a list of recommendations for immediate or near immediate actions for the State to consider that we think will be helpful in demonstrating leaderships' commitment to responding to concerns raised by the field and could provide some momentum for further progress.

Please note: we have included most of the suggestions coming out of our site visits, which we realize are numerous. However, this memo orders the suggestions so that those activities we believe could be done more quickly or we view as most critical are listed first within each section.

CYFD Offices – Needed Materials, Capacities, and Authorities

1. Local offices need reliable access to internet and effective technology. Staff and interns need access to working computers, and/or mobile tools for field use, and should not have to wait weeks to receive the basic tools needed to do their jobs. Consider implementing a stronger protocol on requests for and receipt of equipment when needed, and permitting office managers to obtain the equipment for staff before they arrive in the office. We understand that access to the internet can be a challenge in rural areas when networks and

service are a challenge, however, CYFD could dig further into this to identify possible solutions. We think both of these actions would go long way with staff morale.

2. Provide credit cards to offices for use by the County Office Manager so staff do not need to pay on their own/out of pocket and wait (sometimes lengthy periods) for reimbursement for travel related costs, emergencies, etc. Processes can be established and put in place to ensure misuse does not occur.
3. Staff need to be informed of the process to request waiver/reconsideration of revocation of CYFD car driving privileges following speeding indication. We heard that this waiver process exists, but none of the staff with whom we spoke were aware of it.
4. Clarify how much decision-making authority individual County Office Managers have and the decisions they can make with respect to personnel and activities on their own and those that need higher level approval. For example, what changes can they make to internal processes, staff scheduling and assignment of positions, administrative practices, etc.
5. Reexamine the role of CYFD's CBHCs, and the tasks with which they can assist PPWs, beyond a primary "consultation" approach. We heard CBHCs in the past would help with completing assessments and submitting TFC packets, and that they currently complete CANS screenings for CYFD JJS. We also heard in one office that CBHCs are not assigned until a child is already placed in an RTC (if this is not true, it is the current understanding within practice there). Consider physically relocating CBHCs from not only being located in JJS offices to also being present and available in CYFD PS offices.
6. Consider adding staff assistance (administrative or otherwise) to comply with the new Indian Family Protection Act (IFPA) requirements around immediate notice of investigations, requests for records, etc. Staff report that administrative tasks are "always put on the back burner."
7. As the computer system is revised, consider whether screening information from the CAT can repopulate into the CANS, and whether information from the initial CANS screening could be repopulated for subsequent CANS screenings. (This is possible in other jurisdictions.)

CYFD Workforce – Hiring, Recruitment, and Retention Processes

1. Reexamine and streamline the hiring process to address vacancies in offices and within units. Develop a statewide hiring plan, including targets and dates, informed by county-specific needs and opportunities, and assign high-level staff to manage the plan on a routine basis, with a dashboard tracking progress reportable to you on a frequent cadence. Consider specific central office or regional staff assigned to recruit all kinds of needed CYFD field office staff, prioritizing those field offices with the highest turnover rate and/or vacancies. CYFD needs a high-level central office logistics person who is focusing solely on staffing issues and recruitment/retention issues. Publicly highlight (at

least within CYFD) and give credit to field offices when vacancy or turnover rates decline.

2. CYFD county office units should not need to compete with each other over a single applicant who applies for multiple positions, and the County Office Manager should be able to make staffing and hiring decisions based on their overall assessment of the office, caseloads, and needs.
3. Reexamine SPO processes and requirements, and collaborate with SPO on developing solutions to the complexity and length of time it currently takes to process applications and make offers of employment, as the long hiring process is resulting in losing candidates for positions and extended vacancies.
4. Examine the data regarding which staff resign, when in their tenures they leave, from which offices/locations they exit, and their stated reasons in order to identify barriers to retention. Assure staff who leave are engaged in an “exit interview” (in person or at least by phone) regarding why they are leaving. Some staff suggested a “stay interview” yearly or at specific intervals to determine what kinds of staff stay and why they stay.
5. Reexamine pay structure and scale for different types of workers (investigations in particular). Seek a change to the current salary schedule which pays investigators more than PPWs. Consider paying staff more for having a MSW, but not requiring an MSW for certain positions if not determined absolutely necessary.
6. Work with SPO and the Legislature to create a “temporary pay enhancement” for CYFD county office workers to incentivize hiring and retention of CYFD county office workers.
7. Reexamine “on call” assignments, rotation, and compensation. Staff also reported not being paid overtime if they try to flex hours after being on call the night before. We heard a recommendation for building a separate unit for on call assignments; this will require additional resources and might not be a solution in every office, but demonstrates problem solving when possible.

CYFD County Office Staff Training

1. Ensure timely notification of trainings, and not as a late requirement communicated after staff have already scheduled their home visits and work for the day/week. Because court dates and other commitments are often scheduled months in advance, consider publishing a comprehensive 2023 training calendar, published to the field by November 1, 2022.
2. Reexamine the content and timing of required training for each type of position, as well as degrees required to apply for positions. We heard that the MSW requirement for family preservation/in-home staff has resulted in no applicants for current vacancies in at least one local office. We also heard the full CYFD New Employee Training (NET) is required for all new positions even if the individual was previously in a different CYFD position and already took the NET recently.

3. Ensure appropriate training for staff before being assigned “on call.” We heard of PPW staff being called out in the middle of the night for an investigative response without the proper preparation or training to be in this position.
4. Ensure staff required to stay overnight with children/youth in the office have clear training, knowledge, and authority to handle any situations that may arise. We heard of administrative staff and new less-experienced staff being part of the on-call staff required to stay with children/youth in the office overnight.
5. Similarly, ensure appropriate training for staff before being assigned a caseload. We heard of PPW staff being assigned a full caseload before they completed NET, and before they were able to complete thorough on the job shadowing and training. Again, as part of your overall assessment of training, the length and content of NET and the balance of classroom-based learning and field-based learning requires urgent re-examination.
6. Reexamine and clarify the type of coaching support and communication about coaching to be provided for staff. We heard in one office this is only done via Zoom and never in person. Better promote the role and abilities of coaches, and work to build trust between workers and coaches. We heard that some staff do not believe coaches are able to help them with their basic day-to-day tasks (such as conducting an IPP or CANS, or improving case notes), but coaches think this is in fact part of their job. If coaches are able to help with these specific job role tasks, there needs to be trust-building activities so that workers feel confident that working with a coach will be beneficial to them and worth their time.

Behavioral Health Services and Providers

1. Work with current New Mexico based behavioral health providers when reviewing the updates to the trauma-responsive training curriculum. There are some providers who appear to have a solid grasp of complex and attachment trauma, and consulting with providers may give them more “buy in” and ownership of some of the required trainings from *Kevin S.*
2. Hold listening sessions among MCOs’ leadership and care coordination staff and CYFD offices’ leadership and/or line staff regarding roles and collaborations expected. Ask how central office can help clarify roles and/or help assure that care coordination for children in state custody is effective and not duplicative or frustrating for staff, resource parents, or providers. We heard significant confusion about the role of care coordinators and their value, or perceived lack thereof, for certain children in state custody or specific offices or providers.
3. Provide guidance to the field on reimbursement for traditional ceremonies and services – the payment matrix described in the draft PIG could go out now if the processes and funding are in place. Ensure communication makes clear this is not limited to Native American traditions, but also others (for example, Hispanic cultural activities). Ensure the reimbursement process does not take longer than 30 days.

4. Ensure HSD is an active partner with CYFD in increasing behavioral health providers and services for children in state custody. Communicate this partnership clearly and explicitly in *Kevin S.* documents and also in listening sessions, meetings with Plaintiffs' team, and with both CYFD and HSD staff. We found some providers and some CYFD staff unaware of the collaborations between the two departments.
5. Ensure HSD Medical Assistance Division is engaging with providers (along with HSD BHSD and CYFD BHS) and not just leaving that communication to MCOs.
6. Ensure providers have a publicized person within CYFD to speak with regarding any case or system level concerns and/or their willingness to provide services for children in state custody. Publicize the availability of this person to all CYFD and HSD offices – local and at the state level.
7. Once the Behavioral HealthCare Workforce Development Review and Plan are completed, widely communicate the departments' commitments to activities to increase and support the behavioral healthcare workforce.

Communications

1. Set up listening sessions with CYFD staff/field offices and with providers (virtual or in person) in every CYFD office to explain how and why the *Kevin S.* requirements are part of the larger goals of the two departments (CYFD and HSD) and to specifically ask what issues or requirements are getting in the way of CYFD and providers being able to help meet those goals. Be prepared to hear about care coordination confusion, all the training requirements, billing and administrative barriers for providers, staffing and pay issues.
2. Consider engaging with the Governor (post-election) about her commitment to CYFD staffing and to ensuring children in state custody receive the services and supports they need, and about the need for her to talk about this commitment publicly.

Youth and Families

1. A reported challenge for youth is accessing and obtaining a driver's license, and solutions were not reported to be readily available.
2. We also heard that provision of phones and data plans might have been provided only temporarily by CYFD to youth during COVID; consider making this permanent.
3. Consider revising the youth grievance policy postings to include a "tear off" with information on how a youth can file a grievance. CYFD or OCR could also create a pocket-sized card that has the Child and Youth Bill of Rights and details of the grievance process (i.e., what happens after they send the email or make a phone call). Fast track implementing the OCR beta page on the CYFD website that explains the grievance process and make it easily searchable from CYFD's home page.
4. Consider identifying or adding a specific staff person in each CYFD county office who is charged with and has the dedicated time available to focus on recruiting non-kin resource families. Identify a leader in central office to help these assigned individuals know about

Follow up from Co-Neutrals' Site Visits

September 27, 2022

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best approaches to engaging community members to be willing to be and continue as resource families. Assign recruitment targets for each office and manage the gross and net gains monthly with a dashboard reportable to you on a routine monthly cadence.

5. Consider developing and proposing to Plaintiffs' team a roll out of some *Kevin S.* requirements in stages, based on offices or regions that have the bandwidth to incorporate new changes. Consider how to frame a phased implementation approach for the Plaintiffs' team and for the CYFD and HSD systems as a whole.

We hope this information is helpful. Thank you again to you and your staff for your continuing commitment to improving CYFD and HSD systems and the outcomes for those children and families you serve.

Please let us know if you have any questions.

Sincerely,



Judith Meltzer
Center for the Study
of Social Policy



Kevin Ryan
Public Catalyst



Pamela Hyde
Hyde & Associates
Policy and Practice
Consulting, LLC

cc: Alisa Lauer, Deputy General Counsel, CYFD
Paul Ritzma, General Counsel, HSD
Bryce Pittenger, CEO, Behavioral Health Collaborative, HSD, *Kevin S.* App. A lead
Emily Martin, Acting Protective Services Director, CYFD, *Kevin S.* App. B lead
Beth Gillia, Deputy Cabinet Secretary, CYFD, *Kevin S.* App. C lead
Angela Medrano, Deputy Cabinet Secretary, HSD, *Kevin S.* App. D lead
Sally Jameson, Project Manager, Office of the Secretary, HSD
Trent John, Bureau Chief, Protective Services, CYFD
Eli Fresquez, Office of Children's Rights

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

* * * * *

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.

* * * * *

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 target is no longer in dispute, this target will still be reported and monitored as required under the original terms of the Agreement and CYFD and HSD are obligated to meet the agreed upon Performance Standard as to the target as set forth in the Agreement. The commitments below are to be implemented in addition to the activities set forth in the Agreement for Appendix D, Target Outcome 4.

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

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

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

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

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

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

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

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

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

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

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

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


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

IV. OTHER TERMS

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

Dated: 6/30/2023

By:

DocuSigned by:

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

Dated: 6/30/2023

By:

DocuSigned by:

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

Dated: 6/30/2023

By:

DocuSigned by:

 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@hds.nm.gov>
Cc: Lauer, Alisa, CYFD <Alisa.Lauer@cyfd.nm.gov>; Ritzma, Paul, HSD <paul.ritzma@hds.nm.gov>; Kevin Ryan
Subject: [EXTERNAL] Plaintiffs' Initiate Dispute Resolution- Request Dates for Mediation

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

All,

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

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

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

Agreement.

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

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

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

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

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

Best,

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

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

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