

IN THE ARBITRATION OF

KEVIN S., *et al.*,

Plaintiffs,

vs.

NEW MEXICO CHILDREN, YOUTH and
FAMILIES DEPARTMENT, and
NEW MEXICO HUMAN SERVICES
DEPARTMENT,

Defendants.

REMEDIAL ORDER NO. 1

This Remedial Order No. 1 is entered as part of the Decision and Award dated January 21, 2025, and that arose from the Amended Arbitration Notice filed July 15, 2024. This Order, for specific performance and other injunctive relief, is intended to address Defendants' performance under the Kevin S. Settlement Agreement in the areas of caseworker hiring and retention, foster family development and retention, well-child checks, and data submission. This Order invites submissions and recommendations from the appointed Co-Neutrals and may be supplemented by further Orders entered after receipt of those recommendations and comment and advice from the Parties. This Order is directed to the Department of Children, Youth & Families ("CYFD") and to the New Mexico Healthcare Authority ("HCA") but should be understood as applying also to the Cabinet Secretaries of the Departments, in their official capacities.

DEFENDANTS ARE ORDERED TO TAKE THE FOLLOWING ACTIONS:

Caseloads, Caseworker Hiring and Retention

1. CYFD is directed to ensure that CYFD has taken all steps necessary to request adequate funding from the Legislature during the 2025 session to fully fund all caseworker and case aide positions required for the Department to meet the caseload standards established under the Kevin S. Settlement Agreement. The budget requests should take into account the Department's recent attrition from resignations and retirements in its workforce and allow the Department to hire a sufficient number of caseworkers to meet known need based on historical attrition. CYFD shall file a report in this arbitration at the conclusion of the session, not later than April 15, 2025, documenting how it calculated the funding and number of positions necessary to meet the caseload standards, taking into account known attrition rates, and shall explain in the report the efforts it took to seek the necessary funding.

2. CYFD will prepare, and submit to the Co-Neutrals and Plaintiffs for comment, a plan to create a new classification of worker and add such persons to handle on-call, emergency and overnight work, see Exh. 5 at P001788, by April 30, 2025. The plan should explain, in the judgment of the Department's leadership, how it can best mitigate or eliminate the need for caseworkers with primary case responsibilities to care for children in offices, to work overnight taking care of children or responding to on-call emergencies. The plan should be signed by its principal author.
3. CYFD will prepare a plan and submit it by April 30, 2025, to the Co-Neutrals and Plaintiffs for comment, to increase the Department's new employee training capacity for new hires to commence every two weeks, see Exh. 55 at P001791. The plan should be signed by its principal author.
4. CYFD will explain, in a report to the Co-Neutrals no later than March 31, 2025, and copied to the Plaintiffs and arbitrator, how it has spent the \$3 million special appropriation made by the Legislature described in Exhibits 26 and 28 and the testimony of Mr. Sallee at Tr 22 and 95 (Day 3 (PM)) or, if it has not spent the monies by that time, what plans it has to do so.

Resource Family Recruitment and Retention

5. By February 17, 2025, CYFD will dedicate one placement staff worker located in each of the five high-needs counties identified in the CAP (Bernalillo, Doña Ana, Santa Fe, San Juan, and Chavez/Eddy) to focus exclusively on foster placement recruitment in those counties. The individuals dedicated will be identified by name to the Co-Neutrals in writing by February 10, 2025. The individuals designated will maintain their exclusive focus on recruitment in the five high-needs counties for not less than six months from February 17, 2025 so that the Co-Neutrals can assess whether this strategy—agreed to in the CAP—is proving effective. The Placement Staff dedicated to this work must be in a job category approved by the Co-Neutrals (i.e., if the Co-Neutrals require the job to be performed by a Licensing and Support Specialist, then a Navigator may not fill the role). On or before February 10, 2025, CYFD will identify to the Co-Neutrals, the Plaintiffs and the arbitrator the person assigned responsibility for ensuring this directive is carried out.
6. To permit the Co-Neutrals to understand some of the existing steps that CYFD is taking to improve foster family recruitment and retention, CYFD is directed, if it has not already done so, to provide to the Co-Neutrals any contracts it has entered with individuals or entities to assist in aiding the Department in evaluating or improving foster home recruitment and retention. This directive is in relation to Mr. Jonathan Salazar's testimony that his contract responsibilities have changed since he entered his first state contract in 2023 and that CYFD has hired another contractor to assist in foster family recruitment. The production of such contracts should be completed by February 28, 2025. The Co-Neutrals may of course request from the State such additional information they may require about such contracts or the work done under them in order to provide me with the recommendations I have asked them to provide.

Well-Child Checks

7. HCA will begin submitting to the Co-Neutrals and to the arbitrator the quarterly reports the Presbyterian Health Plan provides regarding the number of well-child checks completed within 30 days after a child enters CYFD custody. CYFD is directed to ask Presbyterian to ensure that these reports include details why any required well-child check was not completed within 30 days and the criteria evaluated should include (1) lack of provider willing or able to see the child within 30 days; (2) no shows for scheduled appointments; (3) lack of transportation; (4) lack of provider within reasonable distance of child's placement; (5) refusal by child 14 years and over to see provider for a well-child check; (6) child no longer in state custody; (7) inability to contact caseworker or foster parent and (8) "Other". In the case of "Other" reason, the report should provide a narrative. HCA will identify the person responsible for implementing the directive of this paragraph to the Co-Neutrals and the arbitrator by February 28, 2025.
8. CYFD will, by March 31, 2025, report to the Co-Neutrals on the utilization of the services offered through the December 21, 2023 contract with the Department of Health, Exh. 105. The report should indicate how many well-child checks were completed through the services offered by that contract, by month, and the facilities where they occurred. The Department's report should indicate whether the contract, which by its terms expired no later than July 1, 2024, was renewed or amended and, if not, why not. The report will be signed by the CYFD employee assigned primary responsibility for the report.
9. HCA will, by April 30, 2025, report to the Co-Neutrals on the status of the Co-Location pilot project in San Juan County with an evaluation of whether that project should be expanded to other counties. The report will be signed by the HCA employee who has been assigned primary responsibility for the Co-Location Pilot Project.
10. HCA will submit to the Co-Neutrals a report, by March 31, 2025, evaluating whether Presbyterian Health Plan, as the sole provider of Medicaid services to most children in the custody of CYFD, can make available electronic access to the medical records of children in the State's custody for caseworkers and foster families who are eligible to review the child's medical records. In the same report HCA will evaluate whether the Presbyterian "MyChart" platform, or any related platform could be rendered capable of recording the completion on time of well-child checks for every child in state custody eligible to receive services from Presbyterian. The report will evaluate whether the same platform could serve as a means of providing to Medicaid providers the necessary template for use in assuring that a well-child check contains all of the required components. The report will also evaluate whether data from the platform could serve as a basis for reporting the completion of the well-child checks on time for use in reporting to the Co-Neutrals. If there are any legal or contractual barriers to using the MyPres or related platform for the purposes described in this paragraph,

CYFD will explain those barriers in detail in the report. The person responsible for preparation of the report should be identified by name to the Co-Neutrals not later than February 17, 2025, with a copy to Plaintiffs and to the arbitrator.

11. Pending receipt and consideration of the recommendations of the Co-Neutrals for strategies for improving compliance with the requirement for timely well-child checks, HCA should identify in writing by March 3, 2025 to the Co-Neutrals, the Plaintiffs, and the arbitrator, a senior leadership staff member to be accountable for improving, developing, and implementing strategies for improving well-child check compliance.

Data Submissions

12. CYFD is directed to ensure that CYFD has taken all steps necessary to request adequate funding from the Legislature during the 2025 session to fully fund the needs of its data team supplying data in compliance with the Department's data obligations under the Kevin S. Agreement. The budget requests should seek funds necessary to hire the additional IT and data specialists that the State witnesses testified about at the arbitration hearing and to continue any contract services that the Department believes it will need to meet its obligation under the Kevin S. Agreement. See, e.g., 2023 Annual Report, at 26, fn 65 ("The State reported that the Kevin S.-related contract with Falling Colors is 'projected to end June 30, 2025'"). CYFD shall file a report in this arbitration at the conclusion of the session, not later than April 15, 2025, documenting how it calculated the funding necessary to comply with this directive and the number and type of positions it determined were necessary to fulfill the Department's data obligations under the Kevin S. Agreement. The report should explain the specific efforts it took to seek the necessary funding.

Other Relief—Invitation for Recommendations from Co-Neutrals and Comment by the Parties

13. The Co-Neutrals are invited to submit for my consideration their recommendations on what other remedial orders I should consider to assist the State achieve measurable progress in the areas of caseworker hiring and retention, foster home development, well-child checks, and data submissions.
14. In making any recommendations, I invite the Co-Neutrals to comment on the advisability of directing the State to adopt any prior recommendations of the Co-Neutrals that the State has not already adopted or that are not already incorporated into this Order. For reference, Plaintiffs identified a list of such recommendations and incorporated them in their Post-Trial Proposed Findings of Fact and Conclusions of Law in Exhibit A and in the "Proposed Judgment Language" beginning on page 86 of that submission.
15. I also invite the Co-Neutrals' views on whether CYFD and, potentially, HCA would benefit from the establishment within CYFD of an Office of Ombudsman to focus

initially on identifying barriers to workforce development and retention and foster home retention and development. The systemic problems facing CYFD appear to stem primarily from a need to have an adequate and stabilized workforce and an adequate and a robust network of placement options for children. One role for the Ombudsman could be to investigate the source, for example, of bottlenecks in the pipeline of available foster homes, so that effective solutions could be implemented by Department leadership. An Ombudsman could also identify and help develop strategies to remove frustrations that were identified as barriers to retention of case workers and foster home families, such as the need for caseworkers to work overnight and overtime, the lack of a prompt means to reimburse workers for travel expenses, or the lack of prompt reimbursement of foster families who agree to perform respite care. An Ombudsman might also play an important role in identifying where the Department leadership has not clearly or fully explained its goals and objectives and plans to the Department's many constituents, including foster parents, CYFD's own employees, Legislative staff, and others. I particularly invite the Co-Neutrals' views whether similar offices in other states have been helpful in leading to needed system reform in jurisdictions facing the same types of challenges that New Mexico faces.

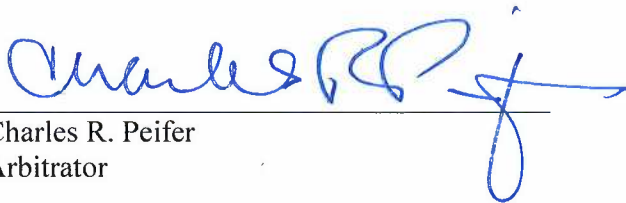
16. In the area of foster family recruitment and retention, I invite the Co-Neutrals' views whether Mr. Salazar's Spiderweb model, with the financial incentive component included, is a strategy that is likely to materially enhance the availability of foster homes. I also invite comment on Mr. Salazar's testimony, including his recommendation regarding the development of a web-based tool for matching foster families with children needing placement. For reference, I invite the Co-Neutrals to review Mr. Salazar's transcribed testimony.
17. In the area of well-child checks, I invite the Co-Neutrals' advice and recommendation whether it would be effective for HCA to identify providers in each region of the State where there are persistent reports of late or nonexistent well-child checks who will agree each month to reserve a specific number of appointment slots (based on known and anticipated admissions to state custody) and to hold them open (perhaps in an online calendar) to be accessed by Presbyterian's case coordinators and/or CYFD caseworkers and foster parents. I also invite comment on whether one possible strategy is for the State to hire or contract with one or more Physicians, Physicians' Assistants, or Certified Nurse Practitioners who would perform in-placement well-child checks for those children who are otherwise unable to obtain a check within, say, 20 days of entry into custody.
18. I am deliberately not setting a deadline for the Co-Neutrals' recommendations because I have no insight as to their availability to do the work I am asking them to do, or of their other commitments during this time of year. I do not require all of the Co-Neutrals' recommendations to come in a single submission and it is perfectly acceptable for them to submit their recommendations in a series of submissions.
19. After the Co-Neutrals submit any written recommendations in response to the invitation in this Order, the Parties are permitted to submit written comment and any

additional documentary evidence that they deem appropriate for me to consider. Responses should be submitted 21 calendar days after the submission of the Co-Neutrals' recommendations.

20. The Co-Neutrals and the Plaintiffs are also invited to respond in writing, within 30 days, to any Plan submitted by Defendants in response to this Order, unless by separate written order I ask for a response sooner after considering the Department's plan. The Defendants are permitted in response to any Plan this Order requires them to submit to raise any objection to my ordering implementation of the Plan.

After receiving the plans, advice, and recommendations of the parties and the Co-Neutrals, I will issue such additional remedial orders as are appropriate and will advise the Parties whether I will want to hear further evidence or argument.

Dated: January 21, 2025



Charles R. Peifer
Arbitrator