



September 26, 2025

Charles Peifer
Arbitrator, *Kevin S., et al.*

Acting Cabinet Secretary Valerie Sandoval
New Mexico Children, Youth, and Families Department

Cabinet Secretary Kari Armijo
New Mexico Health Care Authority

Tara Ford
Public Counsel

Via electronic mail

Re: Co-Neutrals' Report re October 7, 2025 *Kevin S.* Arbitration Status Hearing

Dear Mr. Peifer, Acting Secretary Sandoval, Secretary Armijo, and Ms. Ford,

This report includes information for consideration by the Arbitrator and parties on the State's efforts to implement select requirements set forth in Remedial Order 1 (RO#1) and Remedial Order 2 (RO#2). As requested by the Arbitrator in RO#2, the Co-Neutrals sent a request for information and data to CYFD and HCA related to this report and reports requested by Mr. Peifer for subsequent status hearings.

We want to recognize that earlier this month, CYFD experienced a major leadership transition with the retirement of Secretary Casados and several changes to staff in key positions. The newly appointed leadership team at CYFD of Acting Secretary Valerie Sandoval, Deputy Cabinet Secretary Kathy Kunkle, and Chief Operating Officer Brenda Donald have been proactively communicating with the Co-Neutrals and taking steps to address overdue information and data requests from us. They are also in the process of reviewing agencywide strategies, efforts, and performance barriers to achieve the *Kevin S.* commitments. We anticipate that there may be changes in CYFD's approach and planned actions between now and the end of the year.

Caseloads, Caseworker Hiring and Retention

1. August and September 2025 caseload compliance

The Co-Neutral team analyzed caseload data for August 18 and September 8, 2025 to determine the number and percentage of workers, by type of worker, who had compliant caseloads as of those dates. As of August 18, 2025, of all worker types, 31 percent of workers assigned as primary on any case were compliant with the caseload standards. By worker type, compliance was as follows: 19 percent of investigation workers, 38 percent of permanency workers, 15 percent of placement workers, and 95 percent of in-home services workers.

As of September 8, 2025, of all worker types, 25 percent of workers assigned as primary on any case were compliant with the caseload standards. By worker type, compliance was as follows: nine percent of investigation workers, 34 percent for permanency workers, 16 percent for placement workers, and 86 percent for in-homes services workers. More specific details are included in Attachment A to this report.

Since June 2024, the Co-Neutral team has conducted twice-monthly interviews with a sample of investigation, permanency, and licensing and support workers in different regions/counties to validate CYFD's caseload data. We provide CYFD with findings from our interviews, including any discrepancies in caseload counts. The interviews document, for example, instances when a worker identifies they are acting as the primary worker on a case that is not included in the caseload list generated from FACTS. Since January 2025, we have observed some improvements in the accuracy of the caseload data, although accuracy rates tend to fluctuate depending on the worker type and region. Following each round of interviews, the Co-Neutral team prepares a detailed breakdown of the caseload data, including accuracy rates, trends over time, and a description of the types of data discrepancies reported by the workers and typically provides this to the State within less than one week of the interviews.

2. CYFD's Caseload Data Dashboard

We are not in a position to approve the dashboard as requested by September 30, 2025. In a communication to the State on September 12, 2025, we identified three preliminary issues with the dashboard that needed to be resolved before the Co-Neutral team could conduct a full assessment of the dashboard. First, the dashboard as originally constructed does not factor in graduated caseloads for new workers as defined in the Data Validation Plan (DVP) when calculating compliance rates. Second, the dashboard utilizes the assigned worker's job title to determine the case type for all active cases, which overlooks the fact that workers are assigned cases outside of their job description case type and the prevalence of mixed caseloads in counties across the state. Third, the dashboard as currently planned is structured to be updated once per month which does

not allow leadership and managers to have a real time view of caseloads throughout the state.

In recent conversations with the State, CYFD has affirmed that the changes identified by the Co-Neutrals are needed, and they have begun the work to implement the required structural changes that are necessary to occur prior to the Co-Neutrals' review. As of September 18, 2025, the State reports that graduated caseloads are factored into compliance calculations. The other two issues will require more time to fix: the State anticipates that using a more accurate method for determining case types will require an overhaul of the dashboard that can be completed by December 15, 2025, and they are seeking additional personnel who they believe are necessary to update the dashboard more frequently than monthly.

The Co-Neutral team will continue to work with the State as they move forward to modify the dashboard, and will provide updates in subsequent status hearing reports.

3. CYFD's Plan for Emergency Response Behavioral Health Specialists

The Co-Neutrals received the State's submission of the plan for the Emergency Response Behavioral Health staff (ERBHS) pursuant to RO#2 on September 10, 2025, which was unchanged from the initial documents submitted on April 30, 2025. As described in the Co-Neutrals' RO#1 response provided to the Arbitrator and parties on May 30, 2025, our concerns regarding the specific training and supports that will be provided to the ERBHS staff remain.

As the first steps toward an approvable plan, the Co-Neutral team has asked CYFD to:

- Provide an updated organizational chart identifying where the ERBHS staff and supervisor positions will be added. We strongly encourage the ERBHS staff to be situated within CYFD BHSD as these are behavioral health positions that will require clinical oversight by qualified professionals.
- Specify the training and on-going supports ERHS staff will receive, including training specific to responding to and de-escalating critical incidents that occur in CYFD offices.
- Provide an updated timeline by which CYFD expects these staff to be on-boarded and fully trained to begin work.

Additionally, in response to RO#2 Section III, paragraph 9, the State's September 10, 2025 submission identified that CYFD intends to open and staff a new non-clinical congregate care facility in Dona Ana County with clinical supports provided by a local behavioral health provider. The Co-Neutrals have communicated concerns to the State that building and placing children in additional congregate settings does not align with the goals of Appendix B of the *Kevin S. FSA*.

Resource Home Recruitment and Retention

RO#1, paragraph 5 requires CYFD to dedicate one placement staff worker located in each of the five high-needs counties identified in the CAP (Bernalillo, Dona Ana, Santa Fe, San Juan, and Chavez/Eddy) to focus exclusively on foster parent recruitment in those counties. The staff were to maintain their focus on recruitment in those counties for not less than six months beginning February 17, 2025 so the Co-Neutrals and the State could assess whether this strategy is effective. Since February, the Co-Neutrals have been interviewing the placement staff assigned these responsibilities as part of the work to assess the effectiveness of this strategy. The six-months of interviews with these recruiters have led the Co-Neutrals to conclude that CYFD has not consistently implemented a coordinated plan or effective strategies to recruit, license, and retain non-relative foster families within the five high-needs counties. Attached is a summary report of findings from these interviews (Attachment B).

In addition to the ongoing validation of resource home recruitment and licensing through monthly interviews with the recruitment staff, the Co-Neutrals have spoken with CYFD staff and contractors focused on recruitment and retention efforts, and analyzed monthly data provided by CYFD through August 2025. In general, the Co-Neutrals have determined that CYFD has struggled to license new non-relative resource homes, and based upon the data provided, reached less than one-quarter (23%, or 61 of 265) of their annual target in the first eight months of the year. Attached is a summary report of findings from these discussions and data analysis (Attachment C).

RO#2, III.5. requires the State to conduct an analysis of the contributing factors for families deciding not to proceed with or delaying in becoming a resource home. The Co-Neutrals requested the State's methodology and timeline for conducting this analysis on September 2, 2025 and it was provided on September 10, 2025. The State's methodology includes an analysis of data from Binti (a software system that gives families access to submit an inquiry or application and to upload or enter all the information required to become licensed) and their internal navigation spreadsheet (a document developed by CYFD to consolidate and track information about families from inquiry to licensure) and a plan to conduct interviews with licensing and support workers who keep track of and determine the status of resource homes about the reason for recruiting dropout, denial, withdrawal, and delay. Interviews with resource parents who did not proceed with or delayed becoming a resource parent are a necessary source of information for the State to include in its methodology in order to more fully consider and understand a prospective resource parent's experience and perspective.

RO# 2, III.17. states that CYFD will convene a meeting with its contractors on resource family recruitment and retention and invite the Co-Neutrals to attend the meeting. This meeting has been scheduled for October 2, 2025.

Well-Child Checks

RO#1 requires the State to provide quarterly reports of the number of well-child checks completed within 30 days after a child enters custody, to include detailed information identifying reasons for any well-child checks not completed timely. Similar to the State's Q1 report, the State's Q2 report provided to the parties and Arbitrator on August 29, 2025 utilized the child's Medicaid eligibility date to calculate the timeliness of well-child checks rather than the date the child entered CYFD custody. As such, the Co-Neutrals are unable to validate any progress made by the State to increase the number of children who receive well-child checks within 30 days of entry. Similarly, the State did not provide case-specific data, such as children's FACTS IDs or care coordination notes, to allow the Co-Neutrals to validate the reasons for missed or delayed well-child visits. As of September 19, 2025, the State has confirmed that beginning with foster care entries in September 2025, the State will calculate the data on well-child visits from the date of a child's entry into custody.

Critical Incidents and Fatalities

RO#2, III.7. requires the State to develop a mutually agreeable definition of critical incident with the Co-Neutrals and Plaintiffs that will allow for more meaningful critical incident reporting. Following a series of meetings with the State, Plaintiffs, and the Co-Neutrals, agreement was reached on the definition of critical incidents that was jointly filed with the Arbitrator on September 15, 2025.

As of September 23, 2025, the State has provided information related to 11 critical incidents that occurred between August 18 and September 23, 2025. Of these 11 CIRs, nine were related to 911 calls for children sleeping in CYFD offices in Dona Ana (4 CIRs); Alamogordo (2 CIRs); and Curry, Clovis, Chaves offices (1 CIR each). Two of the CIRs were submitted for the same child currently placed in an out-of-state treatment facility due to the use of restraints.

On September 2, 2025, the Co-Neutrals requested the State provide information on child fatalities or near-fatalities related to children in state custody or with an open PS case that have occurred since January 1, 2025, and outlined what information to include in these submissions. On September 10, 2025 and through a follow up conversation with the State on September 16, 2025, the State identified that there had been seven fatalities and eight near fatalities applicable to these criteria. The children's initials were provided, but other information provided was limited. The State is in the process of developing a protocol to review all critical incidents as defined by the joint agreement submitted to the Arbitrator. This process will include development of findings and recommendations with assignments for follow up. The State has committed to a retrospective review of all fatalities and near fatalities that have occurred in 2025, and to provide the Co-Neutrals with a summary report from this review – including what issues have been identified and how the State will respond to those issues – by November 30, 2025.

Earlier this summer, the Co-Neutrals requested information from the State on two child fatalities of which we became aware. Over the summer, we have carefully reviewed the available information and have prepared a report with high level findings and themes from these reviews. An executive summary of findings is attached as Attachment D. We will also be providing a more detailed report, inclusive of confidential information, to the Arbitrator and parties under seal and pursuant to the Joint Protective Order in this matter.

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The Co-Neutrals' 2024 Annual Report is required by the FSA to be published on November 15, 2025. Therefore, information in the Co-Neutrals' update in advance of the November 20, 2025 arbitration status hearing will be very limited. At a minimum we will provide an update on the State's efforts toward modifications to the caseload data dashboard, and most recent caseload compliance.

As a reminder, Kevin Ryan is traveling and unavailable to participate in the status conference on October 7, 2025. Judith Meltzer will attend the conference and speak on behalf of the Co-Neutrals, as appropriate. Please do not hesitate to reach out if you have any questions or concerns.

Sincerely,



Judith Meltzer
Center for the Study
of Social Policy



Kevin Ryan
Public Catalyst

cc: Rocio Garcia, Plaintiffs' Counsel
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Attachments:

- 1) 9 26 25 Attachment A – August and September 2025 Caseload Compliance
- 2) 9 26 25 Attachment B – Foster Care Recruiter Interviews
- 3) 9 26 25 Attachment C – Recruitment and Retention Efforts
- 4) 9 26 25 Attachment D – Fatality Summary Findings
- 5) 9 26 25 CONFIDENTIAL Co-Neutrals' Fatality Brief (*submitted under seal via hand delivery*)