



DISABILITY RIGHTS  
NEW MEXICO (DRNM)



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### Kevin S. Plaintiffs' Summary of Remedial Order No. 2

When the *Kevin S.* lawsuit settled five years ago, CYFD & HCA co-created a plan with Plaintiffs and national child welfare experts aimed at transforming New Mexico's failed child welfare system into a trauma informed system of care. The Parties agreed that any failure by the State to comply with the *Kevin S.* Final Settlement Agreement would be addressed through arbitration. On August 18, 2025, the Arbitrator appointed by the Parties, Charles Peifer, issued his second remedial order in the *Kevin S.* arbitration, finding the State has not made progress in reforming New Mexico's child welfare system and ordering the State to take concrete action to improve the lives of children in State custody by the end of the year.

#### *What's important*

1. Both the State and the Arbitrator have affirmed that the *Kevin S.* Final Settlement Agreement is the right plan to reform New Mexico's child welfare system. In line with the Final Settlement Agreement, the Arbitrator has established a process for State accountability including additional reporting, periodic status conferences to ensure progress, and a hearing on January 30, 2026 to assess compliance with his second remedial order.
2. CYFD must have a sufficient, stable, and trained workforce. Children should be provided with family-based placements and should not be forced to sleep in offices and inappropriate congregate care facilities. The State must ensure that when it takes children into custody, they are promptly seen by a medical professional, and that necessary medical and behavioral services are made readily available.
3. The State's failures harm New Mexico's most vulnerable citizens. Seven children in foster care have died so far this year, and there have been eight near fatalities.
4. There is no disagreement about what needs to happen to make children safe. Rather, State leadership has not prioritized their obligations under the *Kevin S.* Final Settlement Agreement to the extent needed to get the job done.
5. Plaintiffs are committed to ensuring the State complies with the Arbitrator's orders and the obligations it agreed to in the *Kevin S.* Final Settlement Agreement.

### *What's in Remedial Order No. 2*

1. The Arbitrator issued substantial orders to improve compliance with the State's obligations to children in foster care.
  - a. He set two additional status conferences for October 7, 2025 and November 20, 2025 [moved to Dec. 1, 2025] to monitor the State's progress;
  - b. He invited Governor Lujan Grisham to the October hearing, though she did not attend;
  - c. He set a hearing to assess compliance with his second remedial order for January 30, 2026.
2. The Arbitrator ordered that the State must implement certain provisions of the *Kevin S. Settlement Agreement* by the end of the year, including:
  - a. Complying with the 2025 caseload standards the State agreed to for CYFD caseworkers;
  - b. Licensing 265 new non-relative resource homes;
  - c. Licensing 244 new treatment foster care placements;
  - d. Ensuring 100% of children get comprehensive well child checks within 30 days of entering State custody.
3. To immediately address the safety of children, the Arbitrator also ordered the State to take the following actions immediately:
  - a. Notify the Co-Neutrals within 24 hours of a child's death or a critical incident at hotels, motels, offices, out-of-state placements, shelters, and congregate homes.
  - b. Provide the Co-Neutrals with any information they request about fatalities or critical incidents within 15 days.
4. The Arbitrator asked the Co-Neutrals to help assess the State's compliance with his order.
5. If the Co-Neutrals find the State failed to comply with the Arbitrator's order by the end of 2025, Plaintiffs can seek enforcement of the Arbitrator's order.

### *Recent Successes Gained Through the Arbitration Process*

1. On September 15, 2025, the Parties agreed on a definition of critical incidents to guide the State's reports to the Co-Neutrals.
2. CYFD has recently been more responsive to requests for information by the Co-Neutrals.
3. CYFD has acquired new leaders with demonstrated expertise and success in child welfare and system reform.

*By January 30, 2026: Action Is What Matters*

At the October 7, status conference, the Arbitrator made plain that compliance with the terms of the agreement is mandatory:

“[S]uccess is not based on intentions or expressions of a desire to do better; it’s going to be measured for the purposes of the settlement agreement, compliance with the remedial orders and measurable success for the kids.”

By:

The *Kevin S.* Plaintiffs’ Implementation Team