

OPENING STATEMENT

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A week ago today, the Arbitrator in the Kevin S. lawsuit against HCA and CYFD entered the Fourth Stipulated Remedial Order, which continues the efforts to bring the State into compliance with the *Kevin S* Final Settlement Agreement – an agreement entered in March of 2020. This is the second remedial order resulting from a collaborative process, negotiations and agreement between the parties, which is meaningful because the *Kevin S* Final Settlement Agreement, originally contemplated that the Parties would work together to reform the New Mexico child welfare system.

Stipulated Remedial Order 4 (**RO4**) reflects the reality that while the State of New Mexico has made meaningful progress in some foundational areas, further foundational change is needed for all children in the system to benefit from safe and appropriate placements, services, and supports that are tailored to each child's needs and which are essential to an adequate system of care.

Unfortunately, children in State custody remain in harm's way, and the State remains accountable for remedying the situation. This accountability must not only survive the upcoming changes in political leadership but must be emphasized during this period. We think Remedial Order 4 provides a meaningful mechanism for that accountability.

I. Progress Since the Arbitration Began

Before I highlight the most significant actions the State has agreed to take under Stipulated Remedial Order 4, it is important to acknowledge what the State has accomplished. Since this arbitration began two years ago, the State has made measurable improvements in several key areas:

- CYFD has improved its ability to recruit new foster homes and reached its mid-year target for recruitment of new non-relative resource homes in 2026
- CYFD established a foster parent advisory council designed to respond to resource family concerns and recommend strategies to improve the resource family experience
- The State created and continues to build out its Foster Care Plus Program, meant to provide family-based placements for children with higher needs that benefit from additional training and support. With that said, additional work to improve and implement the program is still required and must be done quickly
- CYFD has reduced worker caseloads, although its progress has not been sufficient, and additional progress must be made immediately
- CYFD established a data dashboard for worker caseloads, which assists CYFD management in tracking and responding to worker caseload issues
- CYFD has dedicated additional personnel and resources towards compliance with *Kevin S* obligations

- The State has achieved and maintained high rates of timely completed well-child visits, driven by daily coordination meetings between CYFD, HCA, and Presbyterian Health Plan leadership. Plaintiffs believe the State can make significant progress in other areas by applying and expanding this strategy of frequent and coordinated problem solving between the entities.
- HCA provided Co-Neutral approved guidance to healthcare providers detailing the elements that must be included in a comprehensive well-child visit
- The State has devoted significant attention to developing the capacity to track and report critical incidents suffered by children in State custody, including incidents of restraint and seclusion and allegations of abuse and neglect. But, in this area the State also has more to do, including ensuring that it meaningfully responds to critical incidents and takes affirmative steps to prevent them
- Finally, the State also participated in multiple meetings with members of the New Mexico community who are engaged in multiple and varied aspects of the child welfare system. This approach has improved the communication and collaboration.

While progress has been slow, these achievements have provided the State with capacity needed to serve the children in its care. For example, now that the State has ensured that most children receive timely well-child visits when they enter custody, it has the opportunity to quickly respond to the needs identified during those doctor appointments.

II. Remaining Barriers and How RO4 Addresses Them

Remedial Order 4 represents the shared understanding of the Parties as to the remaining barriers to a functioning system of care in New Mexico and the next set of steps that the State must take to develop capacity.

Some of the most important commitments the State has made in Remedial Order 4 include:

Stakeholder voices

- The foster parent advisory council established under Remedial Order 3 will continue its work into 2027 and the State will establish a foster youth advisory council to ensure critical voices are heard.

Non-relative resource families, Foster Care Plus and Treatment Foster Care

- CYFD will sustain its progress in recruiting new non-relative resource families by meeting targets for December 2026, March 2027, and December 2027.
- The State has committed to hitting targets for new Foster Care Plus placements in December 2026, March 2027, and December 2027. The State will also address recommendations made by the Co-Neutrals to improve the structure of the Foster Care Plus program and will update its Foster Care Plus Program Implementation Guide and Manual accordingly. HCA and PHP have committed to signing on to the final Manual, in recognition of their responsibility to provide the individualized services to children and families that the Foster Care Plus program cannot function without.

- The State will continue to meet with current TFC agencies, will create a plan in response to concerns raised, will stand up two new TFC agencies focused on serving children with complex needs by mid-2027, and will hit targets for new TFC placements in December 2026, March 2027, and December 2027.

Caseloads

- CYFD has committed to satisfy caseload targets for November 2026, March 2027, and November 2027, so progress in this area does not stall.

Services and health information

- HCA will satisfy 2026 and 2027 quarterly targets for increased utilization of services by children in state custody, including mobile crisis services, intensive case management, high fidelity wraparound, intensive home-based services, dialectical behavior therapy, multi-systemic therapy, cognitive behavioral therapy, functional family therapy, and EMDR.
- The State will make clear descriptions of behavioral health services available to CYFD caseworkers and the public and will obtain approval from the Kevin S. Co-Neutrals of a plan to improve assessment for, referral to, and utilization of those services.
- The State will obtain Co-Neutral approval of a process to address the need for timely sharing of health information between providers, resource families, CYFD, HCA, and PHP, so everyone involved in caring for children in State custody has up to date information about their needs.

Congregate placements

- The State has agreed to decrease the number of days children in state custody spend placed in residential treatment by 15 percent in 2027, as it is well established that those placements are harmful to children and alternatives exist.
- The State will also convene a team focused on transitioning children in out-of-state facilities into appropriate in-state placements in the least restrictive environment.
- For each child in state custody with developmental disabilities or autism spectrum disorder that is placed out of state, the State will convene a team tasked with transitioning them into a family-based setting in New Mexico. CYFD will also provide Disability Rights New Mexico with the contact information of all children with developmental disabilities who are placed in congregate care out-of-state so Disability Rights New Mexico can assist with their transition to appropriate placements with adequate supports and services.
- HCA will apply for an expansion of the DD waiver to include family-living services for children in state custody, which will promote the placement of children with development disabilities in family-based placements instead of congregate settings.
- The State will revise its plan assessing gaps in the statewide continuum of community-based placements for children in state custody to reflect recommendations made by the Co-Neutrals and will obtain Co-Neutral approval of the plan.

- The State's obligation to notify the Plaintiffs and Co-Neutrals at least 30 days before it expands any congregate placements continues.

Critical incidents

- The State will promptly obtain Co-Neutral approval of a comprehensive critical incident policy, that will address restraint, seclusion, and oversight of psychotropic medications, among other requirements.
- The State will contract with an expert on reducing the use of restraint and seclusion.
- The State will report to the Co-Neutrals on allegations of abuse and neglect in congregate care settings and the State's response to the same.

III. Ensuring Continuity Through Administration Transitions

This Remedial Order was negotiated with the upcoming change in gubernatorial administration in mind. The upcoming change in leadership poses a real risk to the continuity of reform efforts for the State's most vulnerable children, as their lives do not pause just because there is a change in administration. As such, progress the State has made and has agreed to make in the next several months must not be undermined by contrary new initiatives or a decision to start over from scratch.

Remedial Order 4 is truly the result of years of efforts by the Parties to understand and address the root causes of the issues facing New Mexico's child welfare system and Plaintiffs intend to continue to hold the State accountable to its commitments. Accordingly, Remedial Order 4 provides that there will be:

- All-Parties meeting before the 2027 Legislative Session begins.
- A status conference with the Arbitrator in May 2027.
- And hearings on compliance in both August 2027 and February 2028.

IV. Conclusion

To conclude, Stipulated Remedial Order 4 sets forth the next step in a detailed, enforceable framework that will outlast the current administration and will ensure that the next chapter of this case is one of continued and urgent capacity building.