

IN THE ARBITRATION OF

KEVIN S., *et al.*,

Plaintiffs,

vs.

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

Defendants.

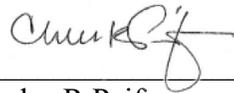
ORDER ADOPTING STIPULATED REMEDIAL ORDER NO. 3

This matter having come on for hearing on the parties' agreement as reflected in the attached Stipulated Order No. 3 and there being good cause for adopting that Stipulation as a decision in this Arbitration, it is

ORDERED that the parties' Stipulated Remedial Order No. 3 is adopted as a decision of the Arbitrator and that the Arbitrator will retain jurisdiction over Remedial Orders Nos. 1, 2, and 3 as specified in those Orders. Nothing in Remedial Order No. 3 changes or alters the reporting required to be made to the Co-Neutrals in Remedial Orders Nos. 1 and 2.

It is further ORDERED that, based on the agreement of the parties at the hearing held March 2, 2026, the dates set for the two status hearings mentioned in Remedial Order No. 3 are July 21, 2026 and September 23-24, 2026, both hearings to begin at 9 am mountain time.

Dated: March 2, 2026



Charles R Peifer
Arbitrator

IN THE ARBITRATION OF

KEVIN S, *et al.*,

Plaintiffs,

vs.

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

Defendants.

STIPULATED REMEDIAL ORDER NO. 3

Having met through a settlement process, the Parties, by and through their respective counsel of record, hereby stipulate and agree as follows:

I. Continued Collaboration Between the Parties

To facilitate a collaborative problem-solving process, the Parties agree that they will hold one full-day All Parties meeting in May 2026. These meetings will be confidential settlement meetings to allow for full discussion of the status and barriers to implementing the FSA. The Secretaries for each agency and Co-Neutrals will attend. In an effort to ensure that the State is focused on providing accurate information to the Co-Neutrals, the Parties agree that at the All Parties meeting, the Parties will discuss data exchange between the parties, including sharing of current data and amending the FSA requirement for the State's Annual Report.

The Parties further agree that the State may engage with Plaintiffs or any member of the Plaintiffs' Implementation Team to develop and achieve any of the outcomes described below.

II. Remedial Orders and Arbitration

The Parties agree that, except as otherwise provided herein, Remedial Order Nos. 1 and 2 have been met. The Parties agree that Remedial Order No. 2, Section IV, 2(a)–(c) have not been met. The Parties disagree as to whether Remedial Order No. 2, Section IV, Paragraphs 1, 2(d) and 4(a)-(b) have been met. The Parties agree that further enforcement of Remedial Order No. 2 is suspended pending a determination of performance on this Order.

The Arbitration hearing currently set for March 2–4, 2026 will be vacated. The Arbitrator will hold a hearing to discuss entry of this order on March 2, 2026.

III. Well-Child Visits

RO#1, ¶ 7; RO#2, III.6 and IV.2.d

As validated by the Co-Neutrals, after October 2025, the State made substantial progress in ensuring that children in State custody (“CISC”) receive a well-child visit (“WCV”) within 30 days. Additionally, the Co-Neutral team’s review demonstrates, and the State endorsed, the impact of increased coordination and communication between CYFD and HCA. The State reported that a team including leadership of CYFD, HCA and PHP meet every day to track WCVs for CISC, and that it would be beneficial for such meetings to continue.

The Parties agree that CYFD and HCA should continue their strategy of meeting every day with PHP to ensure WCVs are completed timely. The State will notify the Co-Neutrals and Plaintiffs 30 days before making any substantive changes to its WCV compliance strategy, including changes in the frequency of meetings and changes to which entities participate in the meetings.

The Parties agree that HCA will develop and disseminate guidance approved by the Co-Neutrals to providers detailing the elements of a comprehensive WCV, that includes guidance specific to CISC, by June 1, 2026.

The Parties agree that CYFD, HCA, and PHP will outline for Plaintiffs and the Co-Neutrals by July 1, 2026 the process for the timely sharing of health information from providers, including the results of the WCVs, among the entities.

The Co-Neutrals are invited to report to the Arbitrator by August 1, 2026, regarding the status of WCV compliance and the States’ strategies regarding WCVs.

IV. Co-location Program Expansion

RO#2, III.12

The Co-Neutrals report that co-location of PHP care coordinators in CYFD offices was a strategy recommended by the State to improve the timely completion of WCVs. The State now maintains that this strategy has not largely improved WCV compliance. While Plaintiffs are concerned that the co-location model adopted by the State, which included very limited co-location hours and co-location in only some counties, contributed to the failure of this strategy, Plaintiffs also believe co-location in other forms has the potential to assist with the resolution of other barriers to inter-agency coordination at a ground level in addressing the needs of CISC.

The Parties agree that CYFD and HCA will collaborate with PHP to develop alternative strategies to improve communication, collaboration, and the sharing of information between PHP care coordinators and CYFD personnel on other related matters. The Parties agree the State has fulfilled its obligation under Remedial Order No. 2, III.12 and no further action on co-location as to WCVs is required.

V. CYFD Caseloads

RO#2, IV.2.a

The Parties agree that by November 1, 2026, ninety percent of all workers of all types will have caseloads compliant with the Data Validation Plan caseload standards for 2026. To ensure that CYFD is on track to meet this obligation in the interim, the Parties further agree that by July 1, 2026, at least 50 percent of workers for all caseworker types will have caseloads compliant with the caseload standards for 2026.

Additionally, to come into compliance with Remedial Order No. 2, IV.4.b regarding the data dashboard for caseload management, the Parties agree that CYFD will make all changes requested by the Co-Neutrals related to its data dashboard and source data within 15 days of the Co-Neutrals' request.

The Parties further agree that CYFD will train all County Office Managers on implementation of the data dashboard by May 15, 2026. The Parties also agree that CYFD will solicit feedback from local CYFD managers on the data dashboard by no later than July 1, 2026 and will make any changes accordingly by August 1, 2026.

VI. Care and Behavioral Support Specialists (CBSS)

RO#2, III.9–10

CYFD will develop a plan to submit to the Co-Neutrals for approval and will provide a copy to the Plaintiffs by May 1, 2026 that includes (1) description of the support provided to CBSS workers and (2) details the process CYFD is implementing for CBSS workers' case record reviews. The Co-Neutrals are invited to report on this term and the implementation of CYFD's plan regarding utilization of CBSS staff to the parties and the Arbitrator by August 1, 2026.

VII. Resource Family Recruitment and Retention

RO#2, IV.2.b

A. Recruitment Target

The Parties agree that if approved by the Co-Neutrals, CYFD may use a different methodology to establish the 2026 annual target under the Data Validation Plan ("DVP"). The Parties agree that CYFD will submit any information necessary and obtain the Co-Neutrals' approval of the 2026 annual target by March 31, 2026. The Parties agree that the State will satisfy the annual target by December 1, 2026 and, in the interim, at least 40 percent of its annual target by July 1, 2026. The Parties agree that if the State does not meet either target, the State must show cause to the Arbitrator for its failure to do so.

B. Foster Care Plus

The Parties agree that CYFD will continue to develop and implement the Foster Care Plus program, which will include expanded training and increased payment for resource families and enhanced delivery of services to the children served by those families. CYFD will provide the Plaintiffs, on an on-going basis, with detailed information regarding the training provided to the resource families, when it was completed, and when children were placed under the Foster Care Plus program. The Parties agree that CISC enrolled in Foster Care Plus must have expedited access to behavioral health services, and that adequate access to those services is lacking and will be addressed by CYFD and HCA, including tracking all children in Foster Care Plus who are not receiving HFW and the reason why they are not receiving the service.

The Parties agree that CYFD will submit any information necessary to and obtain the Co-Neutrals' approval of the 2026 annual target for Foster Care Plus homes by March 31, 2026. The Parties agree that the State will satisfy the annual target by December 1, 2026 and, in the interim, will meet at least 50 percent of its annual target by July 1, 2026. The Parties agree that if the State does not meet either target, the State must show cause to the Arbitrator for its failure to do so.

C. Stakeholder Advisory Board

The Parties agree that by July 1, 2026 CYFD will establish a foster parent advisory board, that is representative of New Mexico's resource family community.

To implement this term, CYFD will contract with an organization with child welfare experience to undertake all activities necessary to create and facilitate the foster parent advisory board. In addition to responding to resource family concerns, the board will recommend strategies to improve resource family training, the licensing process, respite opportunities, and the provision of appropriate background and clinical information about CISC to prospective resource families. The board will issue a report to the Parties, Co-Neutrals, and Arbitrator regarding its activities and recommendations by December 31, 2026.

The Parties also agree that CYFD and HCA should reinvigorate its efforts to obtain input directly from children and youth in foster care. The Parties will discuss this issue further at the All Parties meeting, if not before.

D. Placement Support

To address the immediate needs for mental health services necessary to support foster care placements, HCA agrees to consult with CYFD to develop and identify semiannual interim benchmarks and timelines to expand access to and utilization of TFC placements, mobile crisis services, intensive case management, High Fidelity Wraparound services, intensive home-based services, and trauma-based therapies including Dialectical Behavior Therapy (DBT), Multi-Systemic Therapy (MST), trauma-informed Cognitive Behavioral Therapy (CBT), Functional Family Training (FFT), and Eye Movement Desensitization and Reprocessing therapy (EMDR).

HCA will submit their semiannual interim benchmarks and timelines to the Co-Neutrals by July 1, 2026 for approval. HCA agrees that HCA and PHP will coordinate with CYFD on licensing issues for TFC and MRSS providers and CANS assessment goals. HCA will include their description of these coordination efforts in the July 1, 2026 report.

The Parties agree that within 30 days of proper submission for reimbursement, CYFD will pay all qualifying expenses owed to foster parents. CYFD will continue to include reimbursement information in foster parent monthly newsletters, including regarding processes for late submissions/payments. By August 1, 2026, the Parties agree that CYFD will establish written business practices that include monthly statements to foster parents itemizing all reimbursements requested and payments received. The Parties agree that CYFD will communicate this business practice to foster parents. CYFD will review the written business practices with the foster parent advisory board for comment and input, and will provide the written business practices to the Plaintiffs.

VIII. Dedicated Foster Care Recruitment Staff

RO#1, ¶ 5

CYFD will continue to assess the statewide continuum of community-based placements necessary to support CISC in the least restrictive environment. By June 30, 2026, CYFD will produce a report with actionable recommendations. The report will be subject to Co-Neutral feedback and approval.

IX. Treatment Foster Care (TFC) Placements

RO#2, IV.2c

The Parties agree that HCA must provide the Co-Neutrals with the information needed and obtain the Co-Neutrals' approval of the 2026 annual target for TFC placements by March 31, 2026. The Parties agree that the State will satisfy its annual target by December 1, 2026, will make continuous and continual progress in the interim, and by July 1, 2026 will report to the Co-Neutrals, Plaintiffs, and Arbitrator. The Parties agree that if the State does not meet the annual target, the State must show cause to the Arbitrator for its failure to do so.

The Parties agree that HCA, CYFD, and PHP will track placement of children referred to TFC every two weeks. The tracking will include: placement prior to TFC referral, TFC referrals, denials and reasons for denials, delays and reasons for delays, a description of what alternative services were offered, and outcomes for each child. The leadership team will analyze the data to identify barriers to the provision of TFC service and make recommendations for improvement. The tracking data and documents identifying barriers and recommendations will be provided to the Co-Neutrals on request.

The Parties agree that HCA will not allow PHP to change its utilization management method or medical necessity criteria to further restrict access to TFC for CISC.

HCA will continue to provide technical assistance to applicants who do not initially meet federal criteria to be certified as a CCBHC, including providing tailored technical assistance to support the certification of potential CCBHCs with experience providing services to children.

X. Critical Incidents
RO#2, IV.4.a

The Parties agree that CYFD and HCA will meet with Plaintiffs and Plaintiffs' counsel for one day by May 1, 2026 to develop a plan to appropriately address Critical Incident Reports ("CIRs"). CYFD and HCA will provide their recommendations for a comprehensive CIR plan to the Co-Neutrals and the Plaintiffs in writing by April 1, 2026. The plan must include a method for tracking alleged perpetrators of abuse and neglect at congregate care placements. At the meeting, the Parties will collaborate to identify actionable recommendations and timelines to ensure:

- All stakeholders understand what CIRs must be reported under the agreement by the Parties entered on September 15, 2025, including reporting of restraint and seclusion.
- A method to confirm cross-CIR reporting between CYFD and HCA occurs for all congregate care placements.
- Current forms shall be revised to ensure and document all details needed to describe the incident, the people involved, safety plans, and services provided to the child.
- Current forms shall be revised to ensure and document safety assessment and response as to other children residing in the setting where a CIR took place.
- Current forms shall be revised and must document referrals to CYFD, HCA, PHP and law enforcement as needed.
- Current forms shall be revised to require documentation of follow up actions to be taken by the State to prevent future CIR incidents based on the allegations.
- Developing policies and procedures regarding chemical and physical restraints and ensuring that there is review of all restraints of CISC.
- Responsibility for reviewing and analyzing CIRs by CYFD and HCA.
- Responsibility for monitoring and follow up of restraint and seclusion data by child and facility to identify trends and where alternative strategies or increased monitoring are needed.
- Responsibility for implementing the State's policy on oversight of psychotropic medications.

The State will promptly contract with a child welfare expert who will assist the State to develop child-centered plans for identified children with a focus on identifying and meeting their needs through providing them with natural supports, services and least restrictive placement. This contractor will collaborate with community providers in Las Cruces, including FYI+, as well as CYFD and PHP staff in Las Cruces specifically chosen to support this planning project.¹

¹ Plaintiffs have identified Las Cruces as the location for this child centered planning project to reduce the need for congregate care placement. Importantly, this community actively participated

In addition, CYFD, HCA and PHP will fund the work of professionals responsible for providing recommended services and supports and collaborating with the contractor as needed. Funds will be made available to flexibly create informal and community support services not readily available to support these children and youth. The contractor will also advise leadership on improving assessment processes designed to support stability for CISC. The contractor will have access to CYFD COO Brenda Donald, Deputy Secretary Kathy Kunkel, and HCA Medicaid Director Alanna Dancis as needed to address barriers. She will also have access to the Co-Neutrals as needed.

By June 30 2026, the contractor will file a written report with the Arbitrator, the Co-Neutrals and the Parties explaining the children served by the project, the types of services and supports needed by the children and whether those services and supports were made available. They will identify any systemic barriers and may make recommendations for improvements in the system of care.

The State agrees that children with developmental disabilities will not be placed in RTCs, except in extraordinary circumstances, consistent with the FSA. For children with developmental disabilities and autism spectrum disorder, the Parties agree that HCA and CYFD meet with ARCA and the University of New Mexico Center for Developmental Disabilities to develop actionable recommendations with timelines to place children with developmental disabilities in family-based settings with appropriate services such as evidenced-based therapies and assistive technology. These recommendations will be filed with the Parties, the Co-Neutrals, and the Arbitrator by June 1, 2026.

The Parties agree that at least 30 days before PHP or the State executes any contract, certifies, licenses, or otherwise approves the opening of the Roya Health RTC or any other RTC, multiservice home, transitional home, receiving center, or any new congregate placement or expansion in congregate placements, the State will provide notice of such action to the Co-Neutrals and the Plaintiffs. If Plaintiffs request a status conference upon notice of any such actions, one shall be scheduled and held.

XI. Co-Neutrals' Communications with the Arbitrator Prior to Status Conferences

The Parties agree that there should be a status conference with the Arbitrator in mid-July 2026 in order to ensure compliance with this Order. Two weeks before the status conference, the Co-Neutrals are invited to submit to the Arbitrator and the Parties a report providing any information they deem necessary or appropriate for the Arbitrator to consider in assessing whether the State has made continual and continuous progress on the outcomes and directives set forth in this Order.

in the *Kevin S. Coordinated Action Pilot* project, made substantive recommendations to improve their continuum of care for CISC, and has demonstrated a persistent commitment to supporting CISC. Finally, FYI+ has already forged relationships with schools and other community providers.

Compliance with this Remedial Order will be reviewed at a hearing to be held in September 2026. The State will provide, and will require PHP to provide, all information requested by the Co-Neutrals to assess compliance with this Remedial Order and this proposal within the timeframes specified by the Co-Neutrals. To the extent they are able, the Co-Neutrals are invited to issue a report on the State's progress by September 1, 2026.

XII. Attorneys' Fees and Costs

The Parties will meet and confer regarding attorneys' fees and costs by March 15, 2026. If they cannot come to an agreement, they will present their positions to the Arbitrator.

It is so ORDERED.

Charles Peifer
Arbitrator

Dated: February 26, 2026

Respectfully submitted,

PUBLIC COUNSEL

/s/ Tara Ford

Tara Ford

Katrina Landeta

610 S. Ardmore Avenue

Los Angeles, CA 90005

Office:(213) 385-2977

tford@publiccounsel.org

klandeta@publiccounsel.org

**KEEGAN, RICHARDSON, SOLIMON
& WEST, L.L.P.**

/s/ Christina West

Christina West

Kayla Jankowski

7424 4th Street NW

Los Ranchos De Albuquerque, NM 87107

Office: (505) 842-6123

**MARTINEZ, HART, SANCHEZ
& ROMERO, P.C.**

/s/ F. Michael Hart

F. Michael Hart

1801 Rio Grande Blvd. NW, Suite A

Albuquerque, NM 87104

Office: (505) 343-1776

mikeh@osolawfirm.com

Counsel for Plaintiffs

**JACKSON LOMAN STANFORD
DOWNEY & STEVENS-BLOCK, P.C.**

/s/ Eric Loman

Eric Loman

Travis Jackson

201 Third Street, NW, Suite 1500

Albuquerque, NM 87102

eric@jacksonlomanlaw.com

travis@jacksonlomanlaw.com

Counsel for Defendants