

Deliverable IV C 2: Baseline Report

This document constitutes the baseline report required by the Kevin S Final Settlement Agreement (FSA). It responds to the following language included on p 6 of the FSA:

Baseline Reports: By December 1, 2020, Defendants will provide to Plaintiffs and the Co-Neutrals a baseline report and all data underlying the report. The baseline report shall assess Defendants’ achievement of the Implementation Targets. It shall also describe Defendants’ baseline performance with respect to the Target Outcomes during the period from January 1, 2019 to December 31, 2019.

According to performance standard in the FSA, CYFD and HSD (collectively “the State”) has made a good faith effort to “achieve substantial and sustained progress toward achieving each 2020 Implementation Target or Target Outcome” (FSA, p. 2-3) as the state has made “all reasonable efforts” (FSA, p. 3) to achieve each Implementation Target or Target Outcome. The following Implementation Targets, Target Outcomes and progress reports were agreed to in the FSA and modified by letter dated August 4, 2020.

The state is responsible for meeting the following commitments in 2020:

FSA Reference			Description	Due
VI	C	5	Initial meeting among parties	7/31/20
App A.	Impl. Targ.	1.1	CYFD, with input and collaboration from HSD, will establish Child and Adolescent Needs and Strengths (“CANS”) and functional trauma assessment criteria for access to intensive home-based services in consultation with clinical experts agreed upon by Defendants and Plaintiffs.	12/1/20
App. A	Targ. Outc.	1.1	CYFD and HSD will identify and Co-Neutrals will approve CANS-CAT and comprehensive CANS screening tools.	12/1/20
App. B	Impl. Targ.	2.1	CYFD will publish guidance prohibiting retaliation.	12/1/20
App. B	Impl. Targ.	3.2	CYFD will promote its internal Grievance Procedure for youth.	12/1/20
App. B	Impl. Targ.	3.3	CYFD will develop a Grievance Procedure for Resource Families.	12/1/20
App. B	Targ. Outc.	1.1	No child under 18 will be placed in any hotel, motel, out-of-state provider, office of a contractor, or state agency office unless in extraordinary circumstances necessary to protect the safety and security of the child as documented in the child's record and approved by the Secretary or the	12/1/20

State of New Mexico CYFD & HSD
Kevin S. Settlement Agreement
2020 Baseline Report – Submitted 12/1/20

			Protective Services Director of CYFD and with proper notice as described.	
App. C	Impl. Targ.	4.1	CYFD will maintain a full-time employee responsible for developing/ maximizing culturally responsive services, and for coordinating/ overseeing provision of culturally responsive services by local staff.	12/1/20
App. C	Impl. Targ.	8.1	CYFD and HSD will create and maintain a dedicated ICWA unit and work with AOC to implement lessons learned from the ICWA unit and court throughout the state.	12/1/20
App. C	Targ. Outc.	4.1	CYFD is committed to having Native Children in ICWA-preferred placements. When a Native Child is in a non-ICWA-preferred placement, the placement will be reviewed every 30 days.	12/1/20
App. C	Targ. Outc.	4.2	CYFD will establish and comply with protocols, as approved by the Co-Neutrals, governing the 30-day review process for any Native child in a non-ICWA preferred placement.	12/1/20
App. C	Targ. Outc.	4.3	CYFD will create procedures that enhance accountability for ICWA placement preferences.	12/1/20
App. C	Targ. Outc.	5.1	CYFD will develop an ICWA training plan.	12/1/20
App. D	Impl. Targ.	3.1a	HSD will produce to the Co-Neutrals and Plaintiffs’ counsel a detailed interim progress report on the State’s efforts to develop and publish reimbursement methodology, billing rate information, and guidance for providers.	12/1/20
App. D	Impl. Targ.	4.1a	CYFD, with input from HSD and Dr. George Davis, will publish in the public record for comment proposed regulations governing medication protocols to ensure that Children in State Custody are not overmedicated, while ensuring timely access to medically necessary medication and treatment.	12/1/20
App. D	Targ. Outc.	3.1a	HSD will produce to the Co-Neutrals and Plaintiffs’ counsel a detailed progress report on the State’s efforts to build High-Fidelity Wraparound capacity.	12/1/20
VI	C	1	Data Validation Plan - 2020 commitments only	12/1/20
VI	C	2	Baseline report - 2020 commitments only	12/1/20
VI	C	5	Meeting among parties	12/31/20

Baseline Report:

The following Baseline Report assesses CYFD and HSD’s achievement of the 2020 Implementation Targets and performance with respect to the 2020 Target Outcomes.

FSA Reference			Description	Due
VI	C	5	Initial meeting among parties	7/31/20

Document Reference:

- 7_22_20 Kevin S Parties Meeting Agenda.docx
- 7 13 2020 Kevin S Co-Neutral Letter to Plaintiffs re 180 extension response.pdf
- Letter 6_16_2020
- Letter Re Kevin S Extensions 8 6 20.pdf

The initial meeting among parties took place on 7/22/20. The meeting resulted in the agreement to extend by 180 days the due date for a number of deliverables, as memorialized in the attached letter dated 8/6/20.

FSA Reference			Description	Due
App A.	Impl. Targ.	1.1	CYFD, with input and collaboration from HSD, will establish Child and Adolescent Needs and Strengths (“CANS”) and functional trauma assessment criteria for access to intensive home-based services in consultation with clinical experts agreed upon by Defendants and Plaintiffs.	12/1/20
App. A	Targ. Outc.	1.1	CYFD and HSD will identify and Co-Neutrals will approve CANS-CAT and comprehensive CANS screening tools.	12/1/20

Document Reference:

- A_1_1 CANS CAT Description FINAL 11_27_20.docx
- A_1_1 NMCANS Comprehensive Manual FINAL.docx
- A_1_1 NMCAT Manual FINAL.docx
- A_1_1 2020.11.24_RATING SHEET_New Mexico CAT_DRAFT (002).docx
- A_1_1 2020.11.25_RATING SHEET_New Mexico CANS_Draft (002).docx

In the FSA, Appendix A Target Outcome 1.1 is noted as due 12/1/21. In the exchange of correspondence following the July 2020 meeting among parties, the State agreed to submit this deliverable in 2020, given the considerable progress already made.

The State submitted its initial description of the CANS and CAT, along with the CAT Tool on 10/1/20, and submitted additional information on 11/16/20, in response to the Co-Neutrals’ feedback provided in writing on 11/6/20.

The State met regularly with Co-Neutral Pam Hyde and received technical assistance from the Praed Foundation, resulting in the finalization of the NMCANS and NMCAT Tools and CANS and CANS-CAT Description and supportive materials noted above. These documents were submitted on 12/1/20 with a request for formal approval. The State is committed to continuing to refine and develop its use of the CANS-CAT and comprehensive CANS screening tools.

FSA Reference			Description	Due
App. B	Targ. Outc.	1.1	No child under 18 will be placed in any hotel, motel, out-of-state provider, office of a contractor, or state agency office unless in extraordinary circumstances necessary to protect the safety and security of the child as documented in the child's record and approved by the Secretary or the Protective Services Director of CYFD and with proper notice as described.	12/1/20

Document Reference:

- B_1_1 PR 10 Policy Placement REV 11_30_20.docx

The State confirmed that no child had been placed in any hotel or motel during 2019. By email from Interim Kevin S Project Manager Reed Connell to Co-Neutral staff Rachel Paletta on 10/27/20, the state informed the Co-Neutrals of two instances of hotel stays that occurred in 2020 under circumstances driven by the pandemic. In one of these cases, the youth was already 18, and thus not subject to the terms of the FSA. In the second the youth was days shy of her 18th birthday and caring for her own child, and was offered a suitable placement within days. The State requested from the Plaintiffs, via Rachel Paletta, any additional evidence of hotel or motel stays during 2019 or 2020. The Plaintiffs provided no evidence in response. No child has been placed in a hotel or motel since, and CYFD leadership has reiterated to all staff the complete prohibition on hotel or motel placements of children under 18.

The State revised PR 10, its Placement policy, to clarify and restructure policy regarding the use of out of state placements. The policy was submitted to the Co-Neutrals in draft form on 10/1/20, and revised in response to feedback received from the Co-Neutrals in writing on 11/6/20. The final policy was submitted to the Co-Neutrals on 12/1/20 and takes effect on that date.

The State has clarified that the current Receiving Center, while physically located on the same site as some CYFD offices, does not constitute an office, and thus is not subject to the terms of the FSA. The State welcomed Co-Neutral Pam Hyde and her colleague during an unannounced visit to the Receiving Center on 11/13/20.

State of New Mexico CYFD & HSD
 Kevin S. Settlement Agreement
 2020 Baseline Report – Submitted 12/1/20

FSA Reference			Description	Due
App. B	Impl. Targ.	2.1	CYFD will publish guidance prohibiting retaliation.	12/1/20

Document Reference:

- B_2_1 PR 24 Retaliation and Conflict of Interest REV 11_19_20.docx
- B_2_1 Retaliation Guidance and Publicity 11_19_20.docx

The State submitted draft guidance prohibiting retaliation on 11/19/20, and made revisions in response to the Co-Neutrals’ feedback provided in writing on 11/30/20. The final guidance prohibiting retaliation was submitted on 12/1/20, and takes effect on that date. In accordance with the submission, the guidance will be incorporated into the CYFD employee handbook and published on the CYFD website. On 11/30/20 the Co-Neutrals requested a meeting to further discuss the Retaliation Policy, and proposed dates the week of December 7.

FSA Reference			Description	Due
App. B	Impl. Targ.	3.2	CYFD will promote its internal Grievance Procedure for youth.	12/1/20

Document Reference:

- B_3_2 PR 13 14 Youth Grievance REV 11_19_20.docx

The State submitted documentation of its internal Grievance Procedure for youth on 10/1/20, made revisions in response to the Co-Neutrals’ feedback provided in writing on 11/6/20, and submitted a revised document on 11/19/20. The Co-Neutrals provided additional feedback in writing on 11/30/20. The State made additional revisions and submitted the final procedure on 12/1/20. The procedure takes effect on that date, and will be promoted as detailed in the Procedure. On 11/30/20, the Co-Neutrals requested a meeting to further discuss the Youth Grievance Procedure and proposed dates the week of December 7.

FSA Reference			Description	Due
App. B	Impl. Targ.	3.3	CYFD will develop a Grievance Procedure for Resource Families.	12/1/20

Document Reference:

- B_3_3 PR11 Resource Family Grievance REV 11_19_20.docx

State of New Mexico CYFD & HSD
 Kevin S. Settlement Agreement
 2020 Baseline Report – Submitted 12/1/20

The State submitted documentation of its internal Grievance Procedure for youth on 10/1/20, made revisions in response to the Co-Neutrals’ feedback provided in writing on 11/6/20, and submitted a revised document on 11/19/20. The State made additional revisions in response and submitted the final guidance on 12/1/20. The procedure takes effect on that date. In accordance with the submission, the guidance will be incorporated into the CYFD employee handbook and published on the CYFD website. On 11/30/20 the Co-Neutrals requested a meeting to further discuss the Resource Family Grievance Procedure and proposed dates the week of December 7.

FSA Reference			Description	Due
App. C	Impl. Targ.	4.1	CYFD will maintain a full-time employee responsible for developing/ maximizing culturally responsive services, and for coordinating/ overseeing provision of culturally responsive services by local staff.	12/1/20

Deliverable:

- C_4_1_Tribal_Affairs 10_1_20.docx

On 10/1/20, the State submitted to the Co-Neutrals the Job Description for the Director of Tribal Affairs. On 10/1/20, the State submitted a further description of the Tribal Affairs Division. The State notified the Co-Neutrals and the community of the appointment of Ms. Donalyn Sarracino in October 2019.

The Co-Neutrals’ letter dated 11/6/20 confirms that: *“The job description provided, and appointment of Donalyn Sarracino as Director of Tribal Affairs meet the requirement of this Final Settlement Agreement Implementation Target.”*

FSA Reference			Description	Due
App. C	Impl. Targ.	8.1	CYFD and HSD will create and maintain a dedicated ICWA unit and work with AOC to implement lessons learned from the ICWA unit and court throughout the state.	12/1/20

Document Reference:

- C_8_1 ICWA Unit REV 11_16_20.docx
- C_8_1 State ICWA Letter 9_26_20.pdf

On 10/1/20, the State submitted to the Co-Neutrals a description of the State ICWA Unit. The Co-Neutrals provided feedback in writing in their letter dated 11/6/20, and the State provided

significant additional information addressing that feedback in a revised description of the Unit, submitted to the Co-Neutrals on 11/16/20.

FSA Reference			Description	Due
App. C	Targ. Outc.	4.1	CYFD is committed to having Native Children in ICWA-preferred placements. When a Native Child is in a non-ICWA-preferred placement, the placement will be reviewed every 30 days.	12/1/20
App. C	Targ. Outc.	4.2	CYFD will establish and comply with protocols, as approved by the Co-Neutrals, governing the 30-day review process for any Native child in a non-ICWA preferred placement.	12/1/20

Document Reference:

- C_4_1 4_2 ICWA 30 Day Review Policy 11_30_20.docx
- B_1_1 PR 10 Policy Placement REV 11_30_20.docx

On 10/1/20, the State submitted to the Co-Neutrals a draft of both the ICWA 30-Day Review Policy and the interdependent PR10 Placement policy. The Co-Neutrals provided feedback in writing in on 11/6/20, and the State submitted a revised version of both policies on 11/16/20. The State and Co-Neutrals further discussed the policy during their meeting on 11/20/20, and the Co-Neutrals provided additional feedback in writing on 11/24/20. The State made additional revisions in response to that feedback and submitted the finalized policies on 12/1/20, requesting Co-Neutral approval.

FSA Reference			Description	Due
App. C	Targ. Outc.	4.3	CYFD will create procedures that enhance accountability for ICWA placement preferences.	12/1/20

Document Reference:

- C_4_1 4_2 ICWA 30 Day Review Policy 11_30_20.docx
- B_1_1 PR 10 Policy Placement REV 11_30_20.docx

The revised PR 10 Placement policy and interdependent ICWA 30 Day Review Policy address this requirement. The final PR 10 Placement policy was submitted on 12/1/20 and takes effect that day.

State of New Mexico CYFD & HSD
 Kevin S. Settlement Agreement
 2020 Baseline Report – Submitted 12/1/20

FSA Reference			Description	Due
App. C	Targ. Outc.	5.1	CYFD will develop an ICWA training plan.	12/1/20

Document Reference:

- C 5_1 ICWA Training Plan 11_30_20.pdf

The State submitted the initial draft of its ICWA Training Plan on 10/1/20. The Co-Neutrals provided feedback in writing on 11/6/20. The State made significant revisions to the plan and submitted a revised version on 11/16/20. The Co-Neutrals further discussed the plan during their meeting with the State on 11/20/20, and provided additional feedback in writing on 11/24/20. The State made significant additional revisions to the plan and created an Advisory Group of four individuals representing Tribal and Community Partners and three CYFD staff to support the implementation of the plan. The State resubmitted the Plan to the Co-Neutrals for approval on 12/1/20.

FSA Reference			Description	Due
App. D	Impl. Targ.	3.1a	HSD will produce to the Co-Neutrals and Plaintiffs’ counsel a detailed interim progress report on the State’s efforts to develop and publish reimbursement methodology, billing rate information, and guidance for providers.	12/1/20

Document Reference:

- D_3_1_a Provider Guidance Report 12_1_20.docx
- D_3_1_a BH Policy Manual DRAFT 11_17_20.pdf
- D_3_1_a Behavioral Health Provider Toolkit REVISED 4_22_20.pdf

The State submitted a draft report on 11/22/20. Co-Neutral Pam Hyde provided feedback in writing and during a meeting held on 11/24/20. The State made significant revisions to the report in response to this feedback and submitted the final progress report on 12/1/20, along with supporting attachments as detailed above.

FSA Reference			Description	Due
App. D	Impl. Targ.	4.1a	CYFD, with input from HSD and Dr. George Davis, will publish in the public record for comment proposed regulations governing medication protocols to ensure that Children in State Custody are not overmedicated, while ensuring timely access to medically necessary medication and treatment.	12/1/20

Document Reference:

- D_4_1_a PR 17 Medical and Behavioral Health 11_30_20.docx

Working with Dr. Davis, the State developed a revision of PR17, the policy regarding Medical and Behavioral Health that includes regulations governing medication protocols. The State submitted the initial draft of the revised PR17 on 10/1/20. The Co-Neutrals provided feedback in writing on 11/6/20. The State made significant revisions to the plan and submitted a revised version on 11/16/20. The Co-Neutrals provided additional feedback in writing on 11/24/20. The State made further revisions in response and submitted the final policy on 12/1/20.

FSA Reference			Description	Due
App. D	Targ. Outc.	3.1a	HSD will produce to the Co-Neutrals and Plaintiffs’ counsel a detailed progress report on the State’s efforts to build High-Fidelity Wraparound capacity.	12/1/20

Document Reference:

- 10_1_20_KS_D_3_1_a_WRAP_Implementation_Report.docx
- CYFD HSD Wraparound Progress Report REV 11_16_20.docx
- D 3_1a HiFi Wrap Progress Report 12_1_20.docx

The State formed an interdepartmental Wraparound Working Group that met weekly to develop efforts to build High-Fidelity Wraparound capacity. The State submitted the initial draft report on these efforts on 10/1/20. The Co-Neutrals provided feedback in writing on 11/6/20. The State made significant revisions to the plan and submitted a revised version on 11/16/2019. Co-Neutral Pam Hyde met repeatedly with HSD staff to provide additional feedback and recommendations. The State addressed this feedback and submitted the final report on 12/1/20.

FSA Reference			Description	Due
VI	C	1	Data Validation Plan - <i>2020 commitments only</i>	12/1/20
VI	C	2	Baseline validation report - <i>2020 commitments only</i>	12/1/20

Document Reference:

- Data Validation Plan - Dec 1 2020.pdf
- Baseline Report 2019 - Dec 1 2020.pdf
- *Supportive data and documentation*

State of New Mexico CYFD & HSD
Kevin S. Settlement Agreement
2020 Baseline Report – Submitted 12/1/20

The State contracted with Falling Colors to support the development of the Data Validation Plan. Falling Colors came onboard in October 2020, and immediately began working with the State on the draft Plan and 2019 Baseline Report.

The State submitted the initial draft of the Data Validation Plan and 2019 Baseline Report on 11/16/20, and submitted a revised version on 11/18/20. The Co-Neutrals provided additional feedback in writing on 11/24/20. The State and Falling Colors made revisions to the Plan and Baseline Report and submitted the final version for Co-Neutral approval on 12/1/20.