

Memorandum of Understanding
Kevin S. Settlement Dispute Resolution:
Select Appendix B and C Target Outcomes and Implementation Targets

I. Purpose

In the spirit of collaboration, Plaintiffs' Counsel, CYFD and HSD (individually as "Party" and collectively as the "Parties") employed good-faith, best efforts to discuss and resolve disputes, in furtherance of Step 1 of the Dispute Resolution process in Section IX.A of the Final Settlement Agreement (FSA). The purpose of this Memorandum of Understanding (MOU) is to set forth a plan for CYFD and HSD to improve compliance with Appendix B, Target Outcome 1.1; Appendix B, Target Outcome 10.1; and Appendix C, Implementation Targets (ITs) 2.1, 3.1, 5.1, and 7.1 and Target Outcomes (TOs) 2.1, 2.3, and 3.1, and to increase and improve communication between the State and Plaintiffs regarding implementation of the same ITs and TOs. As used in this MOU, the term "State" refers to CYFD and HSD. The following are the agreements regarding these appendices.

II. Appendix B, Target Outcome 1.1

By December 1, 2020, 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. In any such extraordinary circumstance, CYFD shall provide notice to the child's Guardian ad Litem ("GAL") and Youth Attorney ("YA") immediately where possible, and not more than 24 hours after the placement of the child. Notification to the dependency court to which the child's case is assigned must occur within 3 business days. When a child is placed with an out-of-state provider, notice to the child's Guardian ad Litem, Youth Attorney, and the dependency court to which the child's case is assigned will be given prior to the move, pursuant to statute.

In order to meet the standard required by this deliverable, the Parties agree that the State will implement:

A. A Child-Specific Approach for Out-of-State Congregate Care Placements

1. Beginning May 15, 2022, a specialized support team will begin reviewing each child in an Out-of-State Congregate Care Placement, prioritizing children who have been in Out-of-State Congregate Care Placements the longest. To the extent possible, these meetings will occur at the same time as the 30-day Individualized Planning Process (IPP) meetings otherwise required by the Kevin S. Settlement.
 - a. Team Composition. The specialized support team will consist of internal CYFD and HSD employees, which may include HSD and CYFD professionals with clinical training and expertise in person-centered planning, developing

wrap-around supports, and single child-specific contracts.¹ In addition, the team will include outside experts with lived experience and service providers and DD Waiver providers as relevant to the needs of the individual child.

- b. Team Purpose. The team will be tasked with conducting an intensive review of the child's situation in order to problem-solve, provide recommendations on bringing the child back to New Mexico, and explore traditional and non-traditional services that will allow the child to be placed in the least restrictive home environment with appropriate support and long-term care as needed. In addition, traditional services may be combined in creative and atypical ways in order to meet the unique needs of the child. Where the team sees that services are not currently available, they will recommend services and identify what is needed to create the specific types of recommended services. These recommendations will be specific and will designate who is responsible for identifying and implementing the team's recommendations.²
2. Options for bringing children back to New Mexico from Out-of-State Congregate Care Placements include single child-specific contracts for services. If funding or other resources are not available to develop and implement a single child-specific contract, a detailed plan will be made to obtain the funding and resources needed to support the child in New Mexico with specific steps to be taken, persons responsible for each activity, and an expected timeline.
 3. Although the timeframe for these reviews will depend on when the teams are available to convene, CYFD will strive to complete these initial reviews by June 30, 2022.
 4. By July 30, 2022, CYFD will meet with Plaintiffs and Co-Neutrals to discuss the challenges and solutions to address the needs of any children who remain in Out-of-State Congregate Care Placements.

B. A Child-Specific Approach for Office Stays

1. Beginning June 1, 2022, CYFD will implement specialized support team reviews for children who have been in office stays for longer than three (3) consecutive days or more than four (4) days in any two-week period.
 - a. Team Composition. The specialized support team conducting the reviews

¹ Persons discussed by the parties include: Bryce Pittenger from HSD and Emily Martin, Farra Fong, Estella Swain, Danielle Cossett, Arturo Calderon, Rosella McCaffery and Liz Hamilton from CYFD, and outside experts, such as New Day Youth and Family Services.

² The specialized support team will work in concert with the individual child's team, including the child's GAL/YA.

will consist of internal CYFD and HSD employees with clinical expertise and experience in engaging teens who have suffered complex trauma.³ Outside experts with lived experience or service providers will also be involved as relevant to the individual needs of the child. The outside professionals included in the specialized team will have demonstrated ability to engage teens who have suffered complex trauma.⁴

- b. Team Purpose. The team will be tasked with conducting an intensive review of the child's situation in order to problem solve and provide recommendations on ways to locate safe and appropriate placements for the child and "get the child to yes" on the recommended placement. Where the team finds that services are not currently available, they will document recommended services during the specialized support team review. The team will document the barriers to attaining the child's consent for placement.

The team may consider an array of placement and service options, which may include, but not be limited to relative placements, reunification with biological parents, Fostering Connections, involvement of Community Behavioral Health Clinicians (CBHC), treatment foster care, and child-specific contracts for services.⁵ The specialized team will use a strengths-based, youth-centered, individualized and flexible approach. In addition to efforts to "get the child to yes," the team will work to "get adults to yes," meaning that the team will investigate what services and supports would enable respite providers and foster parents to say "yes" to providing a safe placement for the child. At the child and foster parent's/respite provider's preference, the immediate placement of the child may be temporary while the specialized support team works with the young person to identify stable, long-term options. Family-based respite options are preferred. The team will document the barriers to attaining respite and foster parent's agreement to becoming a placement.

2. By July 1, 2022, CYFD will begin training permanency workers on ways to engage with older youth on placement decisions, child-centered, creative treatment planning, and other life domain activities that aim to support youth engagement and agreement. CYFD's training will include the impact of trauma

³ Persons discussed by the Parties include: Bryce Pittenger from HSD and Emily Martin, Farra Fong, and Estella Swain from CYFD, CYFD internal staff with lived experience, and outside experts, such as New Day and Family Services.

⁴ The specialized support team will work in concert with the individual child's team, including the child's GAL/YA.

⁵ As above (see 1(c)), if a child-specific contract would enable the child to have a stable placement, and funding or other resources are not available to develop and implement a child-specific contract, a detailed plan will be made to obtain the funding and resources needed to support the child in New Mexico that identifies specific steps to be taken, persons responsible for each activity, and an expected timeline.

as it manifests in behaviors often exhibited by older youth, youth centered decision-making, strength-based supports, relationship building, skill development, and a learning mindset (as opposed to compliance).

C. Data Reporting

1. Beginning June 15, 2022, CYFD will begin providing monthly data to the Co-Neutrals' team regarding placements considered "suboptimal", including office stays, hotel/motel, shelters, out-of-state congregate care, in-state congregate care, and group/community homes (see 3 below). The confidential data will include all children placed in suboptimal placements during the month. If children are placed in more than one suboptimal placement in a month, both placements will be counted in the monthly data CYFD reports to the Co-Neutrals' team. This monthly data will be uploaded on the *Kevin S.* SharePoint site.
2. CYFD commits to providing this data beginning in June but will go back to capture April and May placements and will continue to provide it monthly.
3. The following data elements will be captured in the monthly report:
 - a. **Documented Triage Meetings – Out-of-State Congregate Care.** The percentage of children who had an out-of-state triage meeting documented in FACTS.
 - (1) Numerator: number of children who had an out-of-state triage meeting documented in FACTS during the month
 - (2) Denominator: total children who entered out-of-state congregate care placements during the month
 - b. **Documented Medical Necessity IPP Staffing – Out-of-State Congregate Care.** The percentage of children who had a medical necessity IPP staffing documented in FACTS.
 - (1) Numerator: number of children who had a medical necessity IPP staffing documented in FACTS, both timely and late, during the month
 - (2) Denominator: total children in out-of-state congregate care during the month, who had a 30-day medical necessity review due during the month
 - c. **Documented Medical Necessity IPP Staffings – In-State Congregate Care.** The percentage of children who had a medical necessity IPP staffing documented in FACTS.
 - (1) Numerator: number of children who had a medical necessity IPP

- staffing documented in FACTS, both timely and late, during the month
- (2) Denominator: total children in in-state congregate care during the month, who had a 30-day medical necessity review due during the month
- d. **Documented Staffing – Shelters.** The percentage of children who had a staffing documented in FACTS within 48 hours of placement.
- (1) Numerator: number of children who had a staffing documented within 48 hours of placement during the month
- (2) Denominator: total children who entered a shelter placement during the month
- e. **Documented Staffing – Office or Hotel/Motel Stays.** The percentage of children whose daily staffing was documented each day they remained in an extraordinary circumstances placement.
- (1) Numerator: number of children whose daily staffing was documented for each day they were in those extraordinary circumstances placement each week
- (2) Denominator: total children who experienced an office or hotel/motel stay each week
- f. **IPP Staffings – Group/Community Homes.** The percentage of children who had a timely 90-day IPP staffing to review best interest, or otherwise did not require a staffing during that month.
- (1) Numerator: number of children who had a timely 90-day IPP staffing to review best interest, or otherwise did not require a staffing during that month
- (2) Denominator: total children in group/community homes during the month
- g. **Kinship Placements – First Placement.** The percentage of children who were placed with relatives as their first placement during the month.
- (1) Numerator: number of children who were placed with relatives as their first placement during the month
- (2) Denominator: total children who enter care during the month
- h. **Overall Kinship Placements.** The percentage of children who were placed with a relative as of the last day of the month.
- (1) Numerator: number of children who were placed with a relative as of the last day of the month
- (2) Denominator: total children in out-of-home placements, excluding

children in Protective Supervision, Trial Home Visits, in detention, or temporarily absent on the date the data was pulled, as of the last of day of the month

4. The Parties acknowledge that this monthly reporting will be “unvalidated data” as the data submitted on a monthly basis will not have undergone the same scrutiny and validation as the State’s annual cohort-based data and will be subject to different analytic logic and delayed data entry. Moreover, internal analytics are part of a data quality assurance process, and errors may be corrected after the report is submitted to the Co-Neutrals’ team. Therefore, monthly counts may differ, if compared cumulatively, with those reflected in annual numbers calculated as part of the FSA. The Parties acknowledge that the intent of these monthly data submissions/reports is to help the Parties identify and problem-solve potential issues, rather than to provide “real-time” validation. As such, while the Co-Neutrals’ team will review this information, they will not be validating these data submissions on a monthly basis; the Co-Neutrals’ team will validate both quantitative and qualitative data on the timelines required in the FSA (consistent with any interim deadlines reflected in the DVP). Additionally, these data will not substitute for or replace the required annual data production by the State as outlined in the FSA or DVP.
5. The Parties acknowledge that timely and accurate data collection and reporting is a mutual goal.
6. The data will include a description of the numbers of children in suboptimal placements by county as this will allow Plaintiffs to crosscheck CYFD reporting with information known to them. Plaintiffs will notify CYFD if they have information that suggests that the monthly data is inaccurate.
7. CYFD will provide the Co-Neutrals’ team with the names and placements of children placed out-of-state on a monthly basis, or sooner if requested by the Co-Neutrals’ team. The report for the month will be provided the first each day of the following month. The Co-Neutrals’ team may offer suggestions to CYFD and HSD to assist them in identifying additional actions that might be taken in individual cases to meet the performance standard.
8. CYFD will provide the Co-Neutrals’ team with the names and placements of children who have spent the night in suboptimal placements—offices/hotels/motels/shelters—weekly, or sooner if requested by the Co-Neutrals’ team. The Co-Neutrals’ team may assist CYFD and HSD in identifying additional actions to be taken in individual cases to meet the performance standard. This data will be pulled from FACTS. If the Secretary later determines that the FACTS data does not match the manual information provided to her on a daily basis, CYFD will provide updated information to the Co-Neutrals’ team.

9. The monthly report will be confidential and used to facilitate mediation and dispute resolution of Appendix B, Target Outcome 1.1, and will be labeled: “*Confidential – Communication for Kevin S. Mediation Purposes Only – Kevin S. et al. v. Blalock, et al., No. 1:18-CV-00896*”. Plaintiffs will have access to the monthly reports via the *Kevin S.* SharePoint site. Any children’s names or other identifying information will be redacted in information shared with the Plaintiffs.
10. In addition to the monthly reporting, CYFD will examine the feasibility of posting quarterly, validated reports containing the above data elements to the CYFD’s public website, potentially beginning in July 2022 for second quarter data (April 1 to June 30).⁶ Any data that has not been validated by the Co-Neutrals’ team will note that it is preliminary data subject to further validation.

D. Definitions

CYFD and HSD will meet with Plaintiffs and Co-Neutrals’ team to address Plaintiffs’ concerns regarding definitions, strategies, interim policies, and other procedures and protocols currently being implemented to address this deliverable. This meeting will occur on or before August 1, 2022. If the parties are unable to reach an agreement on definitional terms (including “extraordinary circumstances necessary to protect the safety and security of the child,” “best interest,” and requirement that application of “medical necessity” include consideration of least restrictive environment), Plaintiffs will submit a formal letter to Co-Neutrals’ team documenting the Parties’ inability to resolve this disputed issue, and the Parties will meet and confer with the Co-Neutrals’ team prior to August 15, 2022. The Parties agree that inability to reach a written agreement on these terms after the meeting and conference will result in a determination that the parties were unable to reach an agreement through mediation on this deliverable.

III. Appendix B, Target Outcome 10.1

CYFD Workforce Development Plan. CYFD will create a CYFD Workforce Development Plan that will ensure CYFD’s workforce has adequate qualifications, expertise, skills, and numbers of personnel. The CYFD Workforce Development Plan will describe in writing the expected nature, scope, capacity, and structure of the workforce necessary to meet the obligations described in this Agreement. The plan will include a specific hiring plan that identifies, by county, the number of staff, credentials, and training required to meet the objectives identified in the CYFD Workforce Development Plan and outlines strategies to recruit and retain staff. The Plan will require that all caseworkers and supervisors have sufficient educational credentials and/or directly relevant experience. It will require that CYFD have a sufficient number of caseworkers to ensure that no caseworker will carry a

⁶ Subject to the ability of Falling Colors to provide validation of this data on a quarterly basis.

caseload of greater than the current professional standard identified by the Child Welfare League of America (CWLA). It will also include sufficient numbers of staff trained and able to implement ICWA guidelines using culturally responsive practices. The Plan will describe specific strategies to attract and retain diverse, high-quality staff with appropriate qualifications and skills. The Co-Neutrals' team must approve the CYFD Workforce Development Plan. CYFD will develop the Workforce Development Plan by December 1, 2020 and fully implement it by December 1, 2021. (Due June 1, 2021)

To improve compliance with this deliverable, the Parties agree that CYFD will implement:

A. Data Reporting

By July 1, 2022, CYFD will provide the following data to the Co-Neutrals' team and to the Plaintiffs via the *Kevin S.* SharePoint site:

1. FTE positions by county, including number and type of filled positions and number and type of vacant positions for each county; these data are generated monthly and include average caseloads by county. CYFD will upload the monthly data to SharePoint as it becomes available;
2. Guidance documents provided to counties regarding county staff recruitment and retention plans;
3. Staff survey questions, summary responses, and CYFD analysis of survey results; and
4. Role-specific training materials for Protective Services staff.

B. Staff Satisfaction

By August 1, 2022, CYFD and Plaintiffs will meet to discuss the staff survey summary analyses identified in Section II.A above.

C. Core Competency

CYFD agrees to investigate strategies to increase clinical expertise available to support decision-making by direct services Protective Services (PS) employees. This includes developing role-specific training to assist PS employees on accessing community-based behavioral health services, including intensive home-based services for children in their caseload. In addition, CYFD will explore ways to build internal clinical capacity to direct and support decision-making regarding placement and services.

IV. Appendix C Deliverables: ITs 2.1, 3.1, 5.1, and 7.1 and TOs 2.1, 2.3, and 3.1

A. General Agreements

1. The Parties recognize the unique nature of these Appendix C commitments in that full implementation involves not only a strong commitment from CYFD and HSD, but ongoing communication and partnership, and consultation when necessary and appropriate, with the 23 Nations, Pueblos, and Tribes in New Mexico, as well as meaningful engagement of affected Native American children, youth, and families.
2. The Parties also recognize that Appendix C requires groundbreaking systemic innovations, which will require creativity, flexibility, and an iterative process.
3. The Parties recognize that nothing in either this MOU or the FSA binds the Nations, Pueblos, and Tribes and that the Parties cannot commit the Nations, Pueblos, and Tribes to any activity or engagement contemplated by this agreement or the FSA.
4. The Parties recognize that though there is overlap between categories, there is an intentional difference between the FSA's use of the terms "traditional interventions", "culturally responsive treatments, interventions and supports" and "culturally responsive services, supports and interventions." The Parties agree that all categories include interventions that are not medicalized. The Parties agree that the range of services are related to providing "active efforts" as defined by the ICWA. The Parties agree to the following description of these terms:
 - a. Traditional Interventions (IT 2.1 and TO 2.1)
 - i. Traditional practice accepted by the Native American child, family, and/or Nation, Pueblo, or Tribe; and
 - ii. The cultural strengths inquiry will identify the need for traditional practices.
 - iii. Once approved by the Co-Neutrals' team, the cultural strengths inquiry will serve as the "assessment tool" required by Implementation Target 2.1 to be used by CYFD for first line interventions. By October 30, 2022, CYFD and HSD will update the Co-Neutrals' team with preliminary impressions of the cultural strength inquiry's effectiveness and HSD's efforts to promote traditional interventions (including through the 1115 waiver).

- b. Culturally Responsive Treatments and Services (TO 2.1)
 - i. Identified by the Native American child, family, and/or Nation, Pueblo, or Tribe;
 - ii. Community-based services and programs that are provided in the tribal community such as home visiting, treatment foster care, wraparound services, that incorporate tribal values.
 - c. Culturally Responsive Treatments, Services, Interventions and Supports (IT 3.1, TOs 2.1 and 2.3)
 - i. Identified by the Native American child, family and/or Nation, Pueblo, and/or Tribe; and
 - ii. Culturally responsive services that are related to child welfare that are provided in the Native American child's community, including in urban settings, such as culturally responsive substance abuse treatment, domestic violence counseling, individual counseling, wrap around, home visiting, treatment foster care.
 - These culturally responsive treatments, services, interventions and supports are not necessarily grounded in the tradition of a specific Nation, Tribe or Pueblo and should be discussed with the child's Nation, Pueblo or Tribe; and
 - Include broader wellness and recreational activities that incorporate cultural values or social gatherings, in areas such as the arts, music, and sports or other physical activities.
5. As required by the FSA, the State will pursue federal (Medicaid and IV-E funding) for the activities described by the categories above, with input from the Nations, Pueblos, and Tribes.
 6. The Parties agree that full implementation of this Appendix requires ongoing communication between HSD and CYFD, as well as ongoing communication and partnership, consultation when necessary and appropriate, and meaningful engagement between the State and the Nations, Pueblos, and Tribes.
 7. The activities agreed to by the State in this MOU are intended to improve communication between the Parties about how the State is fulfilling its obligations under the FSA and to assist the State in fulfilling those obligations. Nothing in this MOU creates new obligations independent of or in addition to the obligations in the FSA, nor does it in any way restrict or lessen the State's existing obligations in the FSA or limit the authority of the Co-Neutrals' team as set forth in the FSA. Failure to meet these agreements may be considered by the Co-Neutrals' team pursuant to their authority under the FSA.

B. Specific Agreements

To improve performance related to the commitments subject to dispute resolution, the Parties agree that the State will:

1. Share Information Online

- a. Beginning in June 2022, the State will post information related to progress on Appendix C Implementation Targets and Target Outcomes that are pending Co-Neutral approval on a SharePoint or other private site for Plaintiffs' Counsel and the Co-Neutrals. This information will be posted monthly.
- b. To the extent that any data required by the Data Validation Plan or Quality Assurance, Improvement, and Evaluation Plan is provided, it will be "unvalidated" as it will not have undergone the same scrutiny and validation as the State's annual data. Monthly data may be corrected during the quality assurance process after being posted on this site. Therefore, monthly data may differ from cumulative data reflected in our annual reporting. Any monthly data corrected during the quality assurance process will be posted.
- c. The information posted will include the following information:
 - i. The number of meetings held and their purposes (by commitment);
 - ii. Required trainings offered;
 - iii. Number of training attendees, and evaluation results;
 - iv. Number of out-of-preferred placement staffings held; and
 - v. Number of cultural strengths inquiries held.
- d. The State specifically commits to post:
 - i. The cultural strengths inquiry form, and the written training materials and summative evaluation used to train staff on the cultural strengths inquiry form and related Program Instruction Guideline (PIG), will be uploaded in the month immediately following the finalization of each and updated when changes are made (IT 2.1);
 - ii. The payment matrix developed by CYFD to cover the expenses associated with providing Native American cultural and traditional activities;
 - iii. Existing written materials provided during Technical Assistance (TA) to Nations, Pueblos, and Tribes explaining Title IV-E (including any existing written description of support the State can offer to Nations, Pueblos, and Tribes), numbers of attendees, and if approved by the tribal spokespersons, roles of persons that attend the TA (IT 3.1);

- iv. Documentation of Joint Powers Agreement (JPA) meetings (including presentation materials (if any), dates held and numbers of attendees) (IT3.1);
- v. Documents used to recruit and retain Native American resource families currently in use, updated versions when changes are made (including, for example, blank application forms, and a blank Resource Family Individualized Retention and Training Plan) (IT 5.1);
- vi. Questions asked in the Native American foster family survey and any subsequent written report thereon;
- vii. Contracts with Coalition to Stop Violence Against Native Women, DNA People's Legal Services, and Southwest Family Guidance Center and information about any training that has been provided to these contractors (IT 5.1);
- viii. Monthly reports regarding direct assistance for traditional healing services and cultural activities, including the total amount spent for each of the two relevant service categories used by CYFD and the total number of unique children for whom these payments were made. If CYFD captures other forms of direct assistance (e.g., transportation), it will provide that information; and
- ix. HSD notes about on-going tribal engagements about the 1115 Waiver and interim efforts to provide culturally responsive treatments, interventions, services and supports pending approval of the 1115 Waiver.

2. Hold Monthly Collaborative Meetings

- a. Beginning in June 2022, the State will resume collaborative monthly meetings with Plaintiffs' Counsel, Co-Neutral Judy Meltzer, and others agreed to by the Parties for the purpose of sharing information about implementation of the commitments subject to Dispute Resolution.
- b. At the end of each meeting, the group will identify the topics and agenda for the following meeting, as well as the appropriate participants for the chosen topic. Topics will be limited to issues related to the Implementation Targets and Target Outcomes subject to dispute resolution.
- c. Topics for discussion will include (in no particular order):
 - i. Operationalizing IT 2.1. This would include discussion prior to finalization of the PIG on cultural interventions and traditional services and additional discussion regarding communications with Nations, Pueblos, and Tribes, and Native American parents and children related to

- implementation and effectiveness of the cultural strengths inquiry process (IT 2.1);
- ii. Facilitating access to traditional ceremonies (meaning, discussion of logistical aspects of accessing ceremonies, but without discussion of the ceremonies themselves) (TO 3.1);
- iii. Communication and collaboration with Nations, Pueblos, and Tribes regarding IV-E, assistance the State can provide if requested, and any identified barriers (IT 3.1);
- iv. Impact of the 1115 Waiver and Child in State Custody (CISC) Waiver on Native Children (IT 3.1);
- v. Activities to identify culturally responsive treatments, interventions and supports and plans for expansion, if appropriate (IT 3.1 and TO 2.1);
- vi. Data collection challenges, data analysis and diverse data oversight committee (IT 7.1);
- vii. Culturally relevant services as an active effort to keep families intact (TO 2.1); and
- viii. The State's communication with individual Nations, Pueblos, and Tribes as it fulfills its Commitments under the FSA to work with Nations, Pueblos, and Tribes, seek input from New Mexico's Tribes and Pueblos, and consider "the traditions and culture of the Native [American] Child's Tribe." This discussion will address general approaches the State will and has taken to its communications but will not reveal specifics about particular communications (IT 2.1, TOs 2.1 and 2.3).

3. Post Required Policies and Procedures on CYFD's Website

Within two (2) weeks of Co-Neutral approval of the Cultural Strengths Inquiry and the related PIG, CYFD will post the approved documents on its website.

4. Follow-up on the Cultural Strengths Inquiry Process and Related PIG

- a. CYFD will clarify in the proposed PIG that:
 - i. The child may request cultural interventions and traditional services and ceremonies;
 - ii. Requests for cultural interventions and traditional services and ceremonies may be made at any time and are not limited to the formal administration of the cultural strengths inquiry; and
 - iii. Between cultural strengths inquiries, CYFD will foster consistent contact and communication with the Native American child, parents, and Nations/Tribes/Pueblos about the availability of state assistance when a

Native American child, parents, or Nations/Tribes/Pueblos request to have the child participate in cultural interventions and traditional services and ceremonies.

- b. CYFD will confer with tribal partners about:
 - i. Whether attorneys or others requested by a child or parent/caregiver can attend the cultural strengths inquiry. The State began discussing this issue during two recent tribal listening sessions and will continue the discussion during its weekly policy meeting with tribal social and Indian Child Welfare Act (ICWA) workers;
 - ii. How the State can support the maintenance and development of connections between a Native American child in state custody and his or her Nation/Pueblo/Tribe when that connection is desired and guidance and assistance is needed; and
 - iii. How to engage Native American children and families who have previously been involved in the state child welfare system to seek input on their experiences and how CYFD may improve our services.

5. Confirm the Spokesperson for Each Nation, Pueblo, or Tribe in New Mexico

- a. By July 1, 2022, the CYFD will confer with the leaders of each Nation, Pueblo, and Tribe in New Mexico to identify:
 - i. Who will formally provide the position and perspective of the Nation, Pueblo, or Tribe on matters related to child welfare and culturally responsive services (including behavioral health); and
 - ii. How often the State should reconfirm the spokesperson(s) (for example, annually or with every change of leadership).
- b. HSD will continue to collaborate and communicate with Behavioral Health departments from New Mexico Nations, Tribes and Pueblos, the Native American Behavioral Health Providers Association, and those Native American participants and leaders attending regular meetings between the Human Services Department Secretary and Tribal leaders to discuss mutual concerns and issues related to behavioral health services for children in tribal communities. These meetings and input will be documented in the monthly report posted to the SharePoint site. HSD will ensure that input from these forums is compiled and shared with the Co-Neutrals to inform Kevin S. commitments concerning Native American children in state custody.

6. Make Specific Efforts to Recruit and Retain Native American Resource Families

In its recruitment and retention efforts, the State will:

- a. Focus on relevant considerations, such as safety and appropriateness of the placement;
- b. Affirm in its licensing policy that a foster care license may not be denied based on:
 - i. Poverty alone, or
 - ii. Practices or housing consistent with the prevailing social and cultural standards of the applicant's tribe;
- c. Explore available resources and supports for Native American families seeking a resource family license (such as fire extinguishers and gun locks), the absence of which would otherwise be a barrier to licensing;
- d. Incorporate into the new licensing rule and procedures an opportunity for Native American families seeking licensure to provide information and input to CYFD before a license is denied;
- e. Consider how to incorporate into the new licensing rule and procedures lessons learned from the survey conducted by the Coalition to Stop Violence Against Native Women and the interviews conducted by Pegasus Legal Service for Children, in new licensing rules and procedures;
- f. Provide staff training on cultural responsiveness and humility in the licensing process when rolling-out the new licensing rule and procedures;
- g. Explore ways to help prospective Native American applicants navigate the licensing process;
- h. Request input from the Nation, Pueblo or Tribe before a Native American application for licensure is rejected;
- i. Continue efforts to support Nations, Pueblos, and Tribes license Native American resource families (including through JPAs, child-specific agreements, possible use of state funds, and honoring resource parent licenses issued by tribal governments); and
- j. Will not limit recruitment efforts by County Recruitment teams to family members only but will develop specific efforts to recruit non-family Resource Families from Native American communities.

7. Directly Engage Native American Children, Youth, and Families

- a. By September 30, 2022, the State will create a plan, with input from the spokespeople identified by the Nations, Pueblos, and Tribes, for directly engaging Native American children, youth, and families on culturally responsive treatments, interventions, and supports; and
- b. The State will discuss the plan with Plaintiffs and the Co-Neutrals during one or more of the monthly meetings described in Section IV.B.2 above. The contents of the plan may be considered by the Co-Neutrals for any purpose related to their role and authority under the FSA, but the plan will not be subject to approval by the Plaintiffs or the Co-Neutrals. (TOs 2.1, 2.3, and 3.1). Nothing in this term modifies the requirements for Co-Neutrals' approval, evaluation and monitoring of policies as set forth in the FSA Appendix C. If the plan requires development or revision of policies and procedures related to these deliverables, they must be approved by the Co-Neutrals.

8. Expanding and pursuing federal funding for culturally responsive and culturally competent services, treatments, interventions and supports

- a. Coordination of Services between CYFD and HSD:
 - i. HSD will bolster existing community and tribal relationships that can benefit CYFD and the Native American children in their custody.
 - ii. The State agrees to provide training to:
 - CYFD staff in the IV-E and Medicaid eligibility unit so that they are more familiar with the Medicaid process in order to provide and maintain more consistent coverage; and
 - Ensure that relevant CYFD staff⁷ understand how to access services in tribal communities, and are aware of the services that Nations, Pueblos, and Tribes are developing and providing.
 - iii. The State will review the monthly activities report to identify opportunities for outreach and education to expand services to Native American children and families.
 - iv. The State will work with Native American children, families, and Nations, Pueblos, and Tribes to identify and overcome barriers to accessing

⁷ This staff will include, at minimum, investigators, permanency planning workers, supervisors, county office managers, regional managers, field deputies, Fostering Connections staff, in-home services staff, and client service agents.

culturally responsive services, treatments, interventions, and supports that result from the child being in the custody of the State.

- b. Coordination with Nations, Pueblos and Tribes
 - i. The State will engage tribal partners in discussions about expanding and funding culturally responsive and culturally competent services, treatments, interventions, and supports, including by providing opportunities to:
 - Share information about evidence-based programs and services;
 - Share information about indigenous methods of evaluating culturally responsive and culturally competent services and programs;
 - Assess whether to pursue an amendment to the Family First Prevention Services Act that would expand IV-E funding by creating an exception to the Clearinghouse requirement for culturally responsive programs conducted by Nations, Pueblos, and Tribes; and
 - Provide technical assistance and information about available requests for proposals for available funding under Medicaid and state funds.
 - ii. HSD will meet with the Behavioral Health Providers Association to discuss expansion and provision of services for Native American children. Any input provided will be documented and shared with the Co-Neutrals and Plaintiffs.
 - iii. The State will develop policies to ensure that services developed and provided by Nations, Pueblos, and Tribes are available to Native American children.
 - iv. HSD will work with Nations, Pueblos and Tribes so that they are familiar with and can access Medicaid funding through the 1115 Waiver, including accessing support and assistance from HSD as needed. If the 1115 Waiver is approved by the Center for Medicaid Medicare Services, HSD will work with Nations, Pueblos, and Tribes to develop a process for accessing 1115 Waiver funds.

III. Other Terms

- A. Nothing in this MOU shall be construed to modify the obligations in the FSA, including, but not limited to, timelines for Co-Neutrals' monitoring and reporting regarding FSA commitments.
- B. The Parties agree this MOU is intended to afford the Defendants the ability to fully perform the terms as set forth above and to improve compliance with the FSA.
- C. Except for Appendix B, Target Outcome 1.1, Definitions, as set forth in Section II.D above, the timeline for completion of Step 1 under the Alternative Dispute process set forth in the FSA will be extended to October 1, 2022. The Parties further agree to set

December 1, 2022, 1:30-3:00pm MST, as a date certain for mediation to occur regarding any issues of non-performance with this agreement. The Plaintiffs may also use this mediation date to preliminarily discuss any issues of dispute related to the Co-Neutral's 2021 Report that would be initiated through a separate dispute resolution process pursuant to Section IX of the FSA and a mediation in December 2022 or early January 2023. By November 15, 2022, Plaintiff's Counsel will send a letter notifying the Parties and Co-Neutrals if the mediation meeting is needed.

D. Nothing in this MOU shall preclude either Party from exercising their rights under the FSA.

IN WITNESS WHEREOF, the Parties have caused this Memorandum to be executed on the year and date indicated, with the effective date being the most recent signature.

PLAINTIFFS' COUNSEL REPRESENTATIVE



Tara Ford

06/14/2022

Date

NEW MEXICO HUMAN SERVICES DEPARTMENT



David R. Scrase, M.D.
Cabinet Secretary

6/15/2022

Date

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT



Barbara J. Vigil
Cabinet Secretary

6/15/2022

Date