

NMSCAC



SUBSTITUTE CARE ADVISORY COUNCIL

Children, Youth and Families Department's (CYFD) Discharge of Child Protection Responsibilities

July 2020 - December 2022

Adopted 5 June 2023



Substitute Care Advisory Council

PO Box 3204, Mesilla Park, New Mexico 88047
(833) CRB-CALL ▪ nm.crb@rld.nm.gov ▪ www.nmscac.org



20 June 2023

Dear Judicial, Legislative, and Executive Members,

NM Stat § 32A-8, *Citizen Substitute Care Review Act (Act)* is the only New Mexico legislation with the purpose to provide a permanent system of independent and objective monitoring of children and youth in the custody of the Children, Youth and Families Department (CYFD).

Through the examination of policies, procedures and practices in specific case reviews, CYFD's effectiveness in the discharge of its child protection responsibilities is evaluated. Per the statute, the Substitute Care Advisory Council reviews the activities of substitute care review boards and makes an annual report with its recommendations to CYFD, the courts and the appropriate legislative interim committees regarding statutes, rules, policies and procedures relating to substitute care on or before 1 November of each year.

Due to the Council not having a quorum, an annual report was not distributed in 2021 and the report for state fiscal year 2022 was delayed until now. The information in this report is in accordance with the Council's administrative rules, *8 NM Admin Code 8.26.7.1*, and reflects the period of July 2020 – December 2022. In addition, a status update as of March 2023 of specific cases reviewed during this period is included.

This report, along with the Council's past annual reports with CYFD responses may be found on the Council's website www.nmscac.org. The Council is moving to bi-annual reports with our next report expected by 1 November 2023.

Thank you for your attention to the information contained within this report. Should you have any questions related to the report or the Council, please contact the Council Director, Shelly A. Bucher, LMSW at 505.469.4781 (cell with text) or Email shelly.bucher@rld.nm.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Scates".

Sean Scates
Chair

TABLE OF CONTENTS

Executive Summary -----	4
Recommendations-----	5
CYFD-----	5
COUNCIL:-----	5
Authority-----	6
Organization -----	6
Funding-----	7
Council Activities July 2020 – December 2022 -----	8
Child Abuse Prevention and Treatment Act-----	9
Reports to the Court and Annual Reports-----	9
Access to Information-----	11
Monthly Case Lists-----	13
Specific Case Reviews July 2020 – December 2022 -----	14
Abuse and Neglect Petition and Adjudication-----	17
Prior CYFD Involvement -----	18
Repeat Trends-----	19
<i>CASE MANAGEMENT</i> -----	20
<i>CHANGES IN PLACEMENT</i> -----	21
<i>YOUTH SERVICES</i> -----	22
<i>PSYCHOTROPIC MEDICATION OVERSIGHT</i> -----	23
<i>EDUCATIONAL STABILITY</i> -----	25
Status of Specific Case Reviews July 2020 – December 2022 as of March 2023-----	26
<i>REUNIFIED</i> -----	26
<i>ADOPTED</i> -----	27
<i>PERMANENT GUARDIANSHIP</i> -----	27
<i>EMANCIPATED</i> -----	28
<i>OTHER</i> -----	28
<i>ACTIVE</i> -----	29
Appendix I -----	30
Substitute Care Advisory Council -----	30
SCAC Advisory Committee -----	30
Appendix II Council Staff -----	31
Appendix III NM Foster Child and Youth Bill of Rights-----	32

EXECUTIVE SUMMARY

Evolving from a consent decree in 1983 familiarly referred to as Joseph A, New Mexico enacted legislation in 1985 to monitor children placed in its care. The purpose of NM Stat § 32A-8, the Citizen Substitute Care Review Act (hereinafter “Act”) is to provide a permanent system of independent and objective monitoring of children placed in the custody of the Children, Youth and Families Department (hereinafter “CYFD”) by examining the policies, procedures and practices of CYFD and, where appropriate, specific cases to evaluate the extent to which CYFD is effectively discharging its child protection responsibilities.

The Act has historically required an annual report to CYFD, the courts and the legislature regarding statutes, policies and procedures relating to substitute care as well as a report to the courts following case reviews. Throughout the years, solid recommendations have been provided to improve practice yet there is no documentation of changes made in policy or practice from those recommendations. Rather the same or similar recommendations continue from case to case and year to year. While the Act requires the Council to issue these reports, the Act does not require a response, written or otherwise, to any report from any entity. The Act, which provides information and recommendations to improve policy and practice, does not do so by relying on assumptions of someone acting upon them.

In FY 19, the Council identified the absence of an ongoing dialogue with CYFD in response to reports as a critical missing element in the Act. In FY 21, the Council, CYFD, and legislators collaborated to codify changes in the Act which included the requirement CYFD respond in writing to reports from case reviews and to meet regularly with Council staff for mutually agreed upon solutions. SB 242, a CYFD agency bill that unanimously passed both legislative chambers was vetoed by Governor Lujan-Grisham in April 2021.

Following that veto attempts to establish a Memorandum of Understanding between the Council and CYFD to include the agreed upon legislative changes were not successful. Despite a plethora of opportunities to do so, CYFD has not, of its own volition, followed through with its stated commitment to *‘provide follow up including responses to the reports’*. It is notable that three different Cabinet Secretaries have provided responses to the Council’s previous four annual reports; the instability of this position lends more credence to the critical need to codify responsibilities as it relates to independent and objective monitoring of the discharge of child protection responsibilities.

In past reports, the Council noted trends from specific case reviews of inadequate case management, medication oversight, delivery of youth services and tracking of changes in school settings as well as concerns with placement instability and data accuracy. This report includes information from specific case reviews of 242 children/youth, and for the first time, provides the status of these children and youth as of March 2023. As in past years, the concerns are the same. Most disturbingly is when follow-up reviews were conducted, there was no indication that actions had been taken even though concerns in reports related to the specific rights of children and youth in the care of CYFD.

CYFD’s Foster Child and Youth Bill of Rights¹ details 29 rights of *‘every child and youth in custody of CYFD’*. These rights are to be explained to each child/youth and reviewed a minimum of every three months. Per guidelines² a review is simply acknowledging awareness of the Bill of Rights, not a documented objective assessment of each right being met. The onus of reporting violations is on each child/youth; the ‘subject’ of a grievance in the guidelines is a list of ‘who’ not ‘what’ was violated, and the guidelines are silent as to the statute of limitations or compensation. The entire grievance process is internal to and controlled by CYFD. As such, it is incumbent upon the State of New Mexico to implement a means of independent recourse when the rights of children and youth in its care are not upheld.

¹Appendix III.

²CYFD Program Instruction Guideline 03-2021-#5 (PR 14).

RECOMMENDATIONS

CYFD

- ✚ Establish a Memorandum of Understanding with the Council which includes, but is not limited to:
 - the work of the Council meeting CYFD's CAPTA requirements for citizen review panels,
 - procedures for sharing information,
 - update of policy and procedures regarding the Substitute Care Advisory Council,
 - procedures for responding to reports following case specific reviews,
 - procedures for responding to Council annual reports,
 - including Council staff on task force, workgroups,
 - CYFD Secretary participation in Council meetings as a non-voting member.
- ✚ Establish a workgroup to revise standard reports to the court, such as case plans for caregivers, children, youth, transition home plans, discharge plans, life skills plans, individualized adoption plans and reports to the court. Members of the workgroup should at a minimum include representatives of Council staff, CYFD Quality Assurance Unit, CYFD staff (i.e., direct worker, supervisor), youth, and legal representatives (i.e., Guardian ad Litem, Youth Attorney, Respondent Attorney, CYFD Children's Court Attorney).
- ✚ Develop a protocol for review of data for accuracy prior to dissemination and for review for confirmation or correction as needed when data is questioned.
- ✚ Revise psychotropic medication oversight procedures to include expectations of evaluation of responses to the required 24 questions in court reports.
- ✚ Review and revise policy and procedure regarding change of placement notifications to result in specific information to include in notices.
- ✚ In collaboration with the Public Education Department (PED), co-lead a workgroup to develop protocols to ensure that Best Interest changes in school settings meet state and federal requirements.

COUNCIL:

- ✚ Review and revise administrative rules to allow for timely annual reports when a quorum may not be met due to circumstances beyond the control of the Council.
- ✚ Obtain an Office of Attorney General opinion regarding the possible conflict of duties of the Superintendent of the Regulation Licensing Department to administratively attached agencies as changed in 2021 NM Stat § 9-16-6(B)(9) with NM Stat § 9-1-7.
- ✚ Collaborate with legislators to subsume the Act in new legislation for an independent child advocate office.
- ✚ Refer observations noted in adjudicatory orders to the Children's Court Improvement Commission.
- ✚ Refer observations of notices of changes in placement in accordance with NM Stat 32A-4-14 to the Children's Code Reform Task Force for review and revision.

AUTHORITY

The Substitute Care Advisory Council (hereinafter “Council”) is created under Chapter 32 [32], Article 8 NMSA 1978, (hereinafter “Act”).

The purpose of the Act is to provide a permanent system for independent and objective monitoring of children placed in the custody of the Children, Youth and Families Department (hereinafter “CYFD”) by examining the policies, procedures and practices of CYFD and, where appropriate, specific cases to evaluate the extent to which CYFD is effectively discharging its child protection responsibilities³.

The general purpose of the Council is to oversee substitute care review boards (hereinafter “SCRB”) in their monitoring of children placed in the custody of CYFD to identify systemic policy issues regarding substitute care⁴. The Act authorizes the Council to hire staff, contract for services, establish membership requirements for SCRB members⁵, designation of, and procedures for, cases for SCRB review, appoint a six-member advisory committee, and issue an annual report by 1 November to CYFD, the courts and appropriate legislative interim committees regarding statutes, rules, policies and procedures relating to substitute care.

ORGANIZATION

Council staff consists of a Director, two Coordinators, and an Administrative Assistant⁶. In FY 20, the Office of the Attorney General (hereinafter “OAG”) assigned an attorney to provide legal representation and advice to the Council. Per the Act, the Council is administratively attached to the Regulation and Licensing Department (hereinafter “RLD”) in accordance with NM Stat § 9-1-7. The Council’s past concerns regarding its ability to function independently of RLD and without approval or control of RLD have not been remediated.

Concern has been raised that the 2021 legislative change in the Superintendent’s duties to administratively attached agencies may be in conflict with NM Stat § 9-1-7.

Effective 29 June 2021, the RLD Superintendent’s duties to administratively attached agencies pursuant to NM Stat § 9-16-6(B)(9) changed from *the Superintendent shall*:

*“provide **cooperation, at the request of heads of administratively attached agencies**, to: (a) minimize or eliminate duplication of services and jurisdictional conflicts; (b) coordinate activities and resolve problems of mutual concern; and (c) **resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies.**”* [emphasis added]

to

*“**provide administratively attached agencies assistance as necessary** to: (a) minimize or eliminate duplication of services and jurisdictional conflicts; (b) coordinate activities and resolve problems of mutual concerns; and (c) **provide implementation of licensure processes, budgeting, recordkeeping, procurement, contracting, hiring and supervision of staff and related administrative and clerical assistance for administratively attached agencies.**”* [emphasis added]

³NM Stat § 32A-8-2.

⁴NM Stat § 32A-8-4A.

⁵Citizens interested in becoming a SCRB member undergo an application process which includes background and reference checks, interviews, observations, training and the acknowledgment and adherence to confidentiality agreements and the Member Code of Conduct.

⁶ See Appendix III.

While some may see the changes as subtle, the changes alter the nature of the relationship between RLD and an administratively attached agency as intended by NM Stat § 9-1-7. For example, RLD Superintendent Trujillo informed the Council *“if you look under the regulation and licensing department, there’s a little bit different definition of what the superintendent’s responsibilities are for administratively attached and then you go to the budget process and the budget is very different too; it has been our interpretation of that language [Section 9-1-7c] that the other law that designates and delegates that budget and hiring authority and staffing is through HB 2”*⁷.

RLD did not provide notification to the Council of its intent to propose and advocate for this change; it is not known if notification was provided to each board affiliated with RLD via Section 61 Professional and Occupational Licenses or other entities it has an administratively attached relationship.

The legislature did not apply this change to other executive agencies with responsibilities to administratively attached agencies thereby resulting in administratively attached agencies to RLD being treated differently than agencies administratively attached to Aging and Long-Term Services Department, CYFD, Corrections Department, Cultural Affairs Department, Department of Finance and Administration, Department of Information Technology, Department of Public Safety, Economic Development Department, General Services Department, Higher Education Department, Homeland Security and Emergency Management Department, Human Services Department, Indian Affairs Department, Taxation and Revenue Department, Tourism Department, Veterans’ Services Department, and Workforce Solutions Department⁸.

Therefore, an opinion from the OAG to reconcile the change in RLD Superintendent responsibilities with NM Stat § 9-1-7 and the Act is needed prior to finalizing a Memorandum of Understanding (hereinafter “MOU”) between the Council and RLD.

FUNDING

Appropriation legislation available from 1996 to 2016 indicates funding for the Act was a line-item with a state general fund appropriation to the ‘citizen review board’ and an interagency transfer of funds from CYFD to the Department of Finance and Administration (hereinafter “DFA”)⁹. CYFD and DFA entered into a Joint Powers Agreement (hereinafter “JPA”) *‘to provide for the transfer of federal funds available for the operation of the Citizen Substitute Care Review Act’*¹⁰.

Effective 1 July 2016, the Act required DFA to transfer to the Council *‘all functions, records, personnel, appropriations, money, furniture, property, equipment and supplies’* as well as *‘all appropriations, contract funds and funds for contract administration and staff, the cost of council per diem and travel, training and all other costs of the department of finance and administration relating to the Citizen Substitute Care Review Act’*¹¹.

Nonetheless, line-item appropriation to the Council was removed in appropriation legislation and funds were provided to the Boards and Commission Division (hereinafter “BCD”) of RLD¹². Attempts to re-establish the funding for the Act as a line-item in appropriation legislation have not yet been successful¹³.

⁷Superintendent Trujillo’s presentation to the Council 9 February 2021.

⁸See Chapter 9 NMSA 1978.

⁹Appropriations Summary compiled by the Council Director available upon request.

¹⁰Joint Powers Agreement Between Department of Finance and Administration and Children, Youth and Families Department effective upon approval of the Department of Finance and Administration, terminating upon expiration of Title IV-E funds or the transfer of Citizen Substitute Care Review Act administration to another entity; signed by Heather Wilson, CYFD Secretary, David W. Harris DFA Secretary.

¹¹SB 49, 2016 Regular Session, Chaptered; Section 32-8 *et seq.* NMSA 1978.

¹²State of New Mexico Report of the Legislative Finance Committee to the Fifty-Third Legislature January 2017 for Fiscal Year 2018 Volume 2 https://www.nmlegis.gov/Entity/LFC/Documents/Session_Publications/Budget_Recommendations/2018RecommendVolII.pdf. Charles Sallee, LFC Deputy Director for Budget noted *‘there used to be a general fund appropriation in DFA specials when it [citizen substitute care review] was attached to DFA. Now it is buried in RLD’* (Email from C. Sallee to M. Fischer, LFC Program Evaluation Manager, 22 December 2020, 3:18 p.m.)

Council staff have not been given direct access to financial systems and must rely on RLD for information as to appropriations, expenses, and confirmation of interagency transfer of funds from CYFD. RLD has been inconsistent in providing financial information to Council staff. For example, regular meetings once scheduled between the Council Director and RLD Administrative Services Division Budget Director and Analyst have not occurred since December 2021.

A review of NM State Auditor reports for RLD in FY 2017, FY 2018, FY 2019, FY 2020, and FY 2021¹⁴ do not mention the Substitute Care Advisory Council at all. In FY 2022¹⁵, the only mention of 'Substitute Care' is on page 55 when a purpose for revenue reversion includes 'Substitute Care' although the Council nor the Act are revenue producing. RLD reported the following state general fund appropriation to BCD for the Council:

- | | |
|----------------|----------------------|
| ○ FY 17: 366.8 | ○ FY 21: 430.0 |
| ○ FY 18: 416.9 | ○ FY 22: 431.1 |
| ○ FY 19: 420.5 | ○ FY 23: 31.1 |
| ○ FY 20: 433.8 | |

In July 2022, without explanation for the basis of the change in state general fund appropriation for the Council, RLD's Budget Director reported the expected 431.1 appropriated to RLD BCD for the Council was reduced to 31.1 for FY 23¹⁶. As of this report, a response from RLD to confirm the source of the funds used for Council expenses in FY 23 has not been provided¹⁷.

COUNCIL ACTIVITIES JULY 2020 – DECEMBER 2022

While the Council itself did not have sufficient appointments at times to meet with a quorum throughout this period, the work of the Council continued without pause. This is particularly remarkable as this period includes the extended public health emergency pandemic restrictions and loss of thousands of documents and the ability of staff to use computers due to RLD's cybersecurity breach in October 2022.

The Council:

- Appointed a six-member advisory committee.
- Approved and distributed the FY 20 annual report to CYFD, the courts, and legislators.
- In collaboration with CYFD and legislators, SB 242 unanimously passed both chambers.
- Reviewed 242 children/youth and provided reports to the court, CYFD, and interested parties.
- Council staff and volunteers assisted with and/or participated in annual Children's Law Institutes.
- The Council Director participated in:
 - Children's Court Improvement Commission,
 - The NM Child Fatality Review Board,
 - The National Citizen Review Panel Advisory Board.
 - The CYFD Steering Committee to Enhance Service Delivery.
 - The Children's Code Reform Taskforce.

¹³This was brought to the attention of RLD on multiple occasions. Discussions were held with DFA regarding the re-establishment of the Council as a line-item and in the interim to move funds from the RLD BCD to the RLD OTS. On 20 November 2019, with the coordination of Council Member DFA Deputy Secretary Ward, S. Bucher met with C. Martinez, DFA Deputy Budget Director. Follow up Email from S. Bucher to C. Martinez, cc R. Ward, 20 November 2019 3:37 p.m. Email from A. Miner to S. Bucher, cc R. Ward, C. Martinez 1 September 2020 2:16 p.m. In addition, In December 2020, C. Sallee, responded to a request from Representative Matthews for assistance to re-establish funds for the Act as a line-item in HB 2 stating '*Alison Nichols is our LFC analyst that works on the RLD budget. The two of us can work with you regarding this issue*'¹³. Although additional information was provided to Mr. Sallee, no changes were made in the 2021 appropriations legislation for funding for the Act and no further communication was received regarding the status or intent.

¹⁴<https://www.osa-app.org/auditreportsearch.aspx>

¹⁵<https://www.osa-app.org/auditreportsearch.aspx>

¹⁶Email from Mario Portillo, RLD Budget Director to Shelly A. Bucher, Council Director 26 July 2022 9:13 am.

¹⁷Email from S. Bucher to Stuart Hamilton RLD CFO, Victor Reyes, Deputy Superintendent cc M. Portillo RLD Budget Director 26 July 2022 9:40 am.

CHILD ABUSE PREVENTION AND TREATMENT ACT

In 1996, the federal Child Abuse Prevention & Treatment Act (hereinafter “CAPTA”) required states who receive CAPTA funding to have citizen review panels to evaluate the extent state and local child protection system agencies are effectively discharging their child protection responsibilities. Policy guidance noted *‘these panels have the capacity to promote creative problem-solving’* and *‘the annual reports have the potential to not only increase resources but better collaboration and system change’*¹⁸. CAPTA allowed states to designate existing entities established under state and federal law to meet this federal requirement. Some states have both a state law similar to the Act as well as separate citizen review panels to meet the CAPTA requirement. In CYFD’s state plan, it indicates the work of the SCRBs, and the Council’s annual report meets CYFD’s federal requirement for citizen review panels. SB 242, which was vetoed, included codifying this informal understanding that the work of the Act meets CYFD’s federal CAPTA requirement to:

- Examine policies, procedures, and practices of State and local agencies and where appropriate, specific cases to evaluate the extent that state and local child protection systems are:
 - effectively discharging their child protection responsibilities, and [are]
 - in compliance with the CAPTA state plan, child protection standards and “any other criteria the panel considers important to ensure the protection of children”.
- Provide “public outreach to assess the impact of current procedures and practices upon children and families in the community”.
- “Prepare and make available on an annual basis a report containing a summary of the activities of the panel and recommendations to improve the children protection services system at the State and local levels.”

REPORTS TO THE COURT AND ANNUAL REPORTS

The Act requires a report following each SCRB case review and an annual report. While the Act requires reports be provided to CYFD, the courts, and legislators, it does not require any entity to provide any response to any report.

CAPTA, however, does require CYFD to respond to an annual report within 6 months of the submission of the report. CYFD shall *“submit a written response to State and local child protection systems and the [Council] that describes whether or how the State will incorporate the recommendations of such panel (where appropriate) to make measurable progress in improving the State and local child protection system”*¹⁹.

The Council’s previous annual reports have documented CYFD’s responses do not meet the CAPTA requirements as to timeliness and content, yet there is no known consequence for it not doing so.

Date of Annual Report	Date of CYFD Response	Signature
September 2017	August 2018	Monique Jacobson, Cabinet Secretary
October 2018	October 2019	Brian Blalock, Cabinet Secretary
October 2019	May 2020	Brian Blalock, Cabinet Secretary
November 2020	September 2021	Mariana Padilla, Interim Cabinet Secretary

¹⁸<https://www.acf.hhs.gov/cb/policy-guidance/pi-98-01>.

¹⁹CAPTA, Section 106.c. Citizen Review Panels, 6. Reports.

Per the Council's administrative rules, the report to the court following a specific case review is also submitted to parties entitled to receive notice of the review. CYFD staff, i.e., assigned case worker, supervisor, County Office Manager, Children's Court Attorney, and Regional Manager each receive the report. As CYFD is not compelled to respond nor has it voluntarily done so, the Council previously noted these are lost opportunities for collaboration related to practice, problem solving, and system change.

The Council recommended 31 October 2019:

"Council staff and CYFD administration hold solution-focused meetings regarding the FY 17 and FY 18 recommendations and the overall results of cases of youth reviewed in FY 19."

"The Council, in collaboration with the CYFD Secretary, develop a Joint Powers Agreement which includes, but is not limited to....CYFD written response to reports following a case review."

Per CAPTA, CYFD's written response to describe whether or how it will incorporate the recommendation was due **30 April 2020**.

CYFDs Response 26 May 2020: None.

Following the November 2020 annual report, CYFD collaborated with the Council and legislators for an agency sponsored bill (SB 242) in 2021 which included CYFD acknowledging receipt of the report within ten business days and indicating its position with each recommendation; and Council staff and CYFD meeting quarterly, or as needed to develop mutually agreed-upon solutions.

SB 242 unanimously passed by both chambers was vetoed by Governor Lujan-Grisham in April 2021. Subsequent meetings to attempt to develop an MOU between the Council and CYFD to include responses to reports from specific case reviews were not successful. The response provided by CYFD in September 2021 does not address the legislative change efforts, attempts made, or intent to establish an MOU but states '*CYFD welcomes more frequent reports from the SCAC and is committed to providing follow up including responses to the reports*'.

In September 2022, a letter was sent to CYFD Secretary Vigil providing a status update on the annual report for 2021²⁰. The letter included a summary of case reviews in FY 21 and FY 22 as well as reiterated ongoing concerns regarding responding to case review reports.

Council letter to Secretary Vigil September 2022:

"These [case review] reports provide opportunity for ongoing feedback as to practices and recommendations to improve practices and services to children, youth and families. However, there is no requirement that CYFD provide responses to these reports, either individually or aggregately. Although there was a stated attempt to meet at least quarterly, this practice has not yet been put in place thereby increasing the likelihood that concerns noted will continue and compound. **Action taken now to institute this practice will without a doubt strengthen the case review process in identifying areas of practice which are going well and areas which may need improvement.**"

²⁰Letter from Council Director to CYFD Secretary Vigil 22 September 2022 and CYFD's response is located on the Council's website www.nmscac.org.

CYFD's response received in **November 2022** included:

referring to the concern as *"informally suggesting some recommendations despite the lack of a formal report"*; and,

that *'in regard to these suggestions CYFD would be happy to attend one of your regularly scheduled SCAC meetings to discuss...the frequency of communications between SCAC and the Department...and the timeliness and completeness of responses to the Council's required annual recommendations.'*

ACCESS TO INFORMATION

As noted in annual reports for at least the last ten years, access to CYFD information has been and continues to be a challenge. While the Act requires the Council to *'specify the information needed for designated cases to be monitored'* the Act itself does not require CYFD to provide such information. SB 242, which was vetoed, included the provision of information by CYFD to the Council.

The Children's Code authorizes the Council to receive case information (notices, reports, orders) routinely at various points of a child being in CYFD custody as well as *'all records or information concerning a party to a neglect or abuse proceeding'*²¹. CAPTA requires the state agency (CYFD) to provide *'access to information on cases to be reviewed'*²², yet CYFD does not provide information routinely or upon request on a consistent basis.

The Council recommended **18 September 2017**:

"Children, Youth and Families Department to update policies and procedures regarding substitute care case reviews to reflect the amendments in the Act."

Per CAPTA, CYFD's written response to describe whether or how it will incorporate the recommendation was due **18 March 2018**.

CYFD Response 29 August 2018:

"CYFD will continue adherence to all Parts of NMAC 8.26, including Part 7 (Citizen Substitute Care Review). Amendments to the Act effective July 1, 2016 pertain to the activities of the NM Regulation and Licensing Department and the Substitute Care Advisory Council."

The Council recommended **9 October 2018**:

"Revise 8.10.8.29 Court Appointed Special Advocate (CASA) and Citizen Review Board (CRB) and 8.10.8 NMAC PR 29 (5) Substitute Care Review to reflect the Substitute Care Advisory Council's purpose, information to be provided to the Council, to include who provides the information, when to provide the information and how the information provided is tracked."

Per CAPTA, CYFD's written response to describe whether or how it will incorporate the recommendation was due **9 April 2019**.

²¹NMSA 1978 § 32A-4-33.

²²CAPTA, Section 106.c. Citizen Review Panels; 5. State Assistance.

CYFD Response 31 October 2019:

“CYFD will work with Office of General Counsel to revise CYFD policies and procedures to address how information is provided to the Council, when it is due, and how the information is tracked to comply with 8.10.8 NMAC.”

The Council recommended **31 October 2019:**

“The Council, in collaboration with the CYFD Secretary develop a Joint Powers Agreement which includes but is not limited to....access to all information related to children/youth in custody.”

Per CAPTA, CYFD’s written response to describe whether or how it will incorporate the recommendation was due **30 April 2020.**

CYFD Response 26 May 2020:

None.

The Council recommended **1 November 2020:**

“In collaboration with Council Staff, update policy and procedures regarding the Substitute Care Advisory Council; such as the sharing of information, staff participation in the processing of case reviews and grievances to include providing written responses within a specified timeline and inclusion of Council Staff on task forces/workgroups and develop ongoing training for CYFD staff regarding the role and function of the Council.”

Per CAPTA, CYFD’s written response to describe whether or how it will incorporate the recommendation was due **1 May 2021.**

CYFD Response 1 September 2021:

“In meetings after this report, SCAC has indicated improvements in responsiveness by CYFD for documents and information.”

In September 2022, a letter was sent to CYFD Secretary Vigil providing a status update on the annual report for 2021²³. The letter included a summary of case reviews in FY 21 and FY 22 as well as reiterated ongoing concern regarding access to CYFD information.

Council letter to CYFD Secretary Vigil September 2022:

“An ongoing concern noted in annual reports that has yet to be fully resolved is access to information. Without direct access to the data systems of CYFD and the Courts, it has been determined in discussions with previous CYFD administration best practice is to request such documents directly from CYFD legal staff. While this is occurring in some areas, it still is problematic in that legal staff (seasoned and new) may not be aware to provide documents; may not be timely in their response; may provide some but not all documents; may just ignore the request or refuse to do so. **Action taken now to result legal staff providing information upon request will strengthen the reviews of children and youth.**”

²³Letter from Council Director to CYFD Secretary Vigil 22 September 2022 and CYFD’s response is located on the Council’s website www.nmscac.org.

CYFD's response received in **November 2022** included:

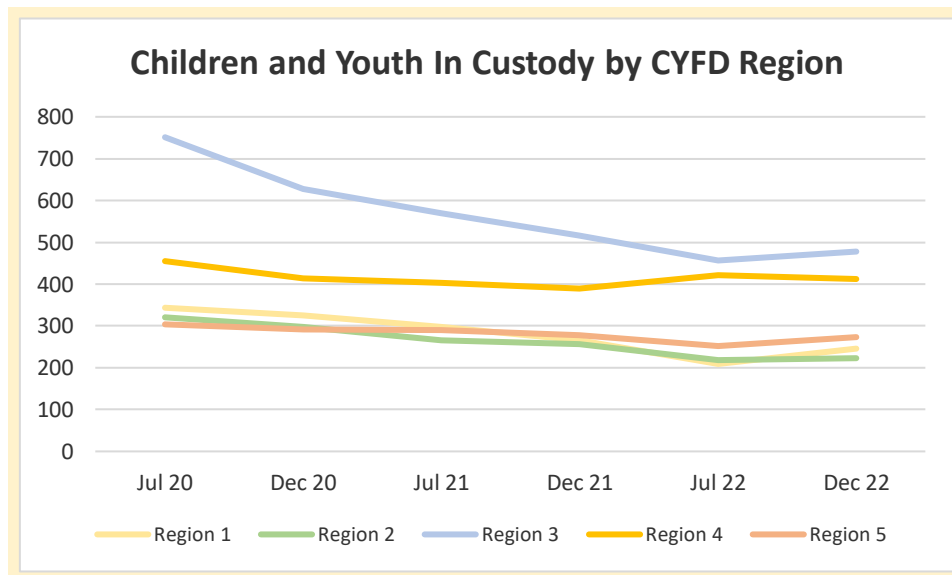
referring to the concern as *"informally suggesting some recommendations despite the lack of a formal report;"* and that

CYFD *'would be happy to attend one of your regularly scheduled SCAC meetings to discuss...the production of information when requested...'*

As of this report, CYFD 8.10.8.29 has not been revised since March 2016.

MONTHLY CASE LISTS

In 2017 CYFD began providing a monthly list of children in custody to the Council. The list is as of the last day of each month and is usually provided by the 20th of the following month. The list includes child/youth, case, person and placement names, personal identifiers for children/youth such as date of birth, age at end of the month, race/ethnicity, episode county/CYFD office assigned, FACTS number, and number of federal placement changes²⁴. In 2019 CYFD added Title IV-E determination to the list for each child/youth. Per the lists provided to the Council, during this period of review, the number of children placed in the care of CYFD has declined.



As with any data system, incorrect entry may occur. In reports following specific case reviews certain errors have been noted, such as case names, race/ethnicity, placement setting and number of federal placement changes (see Repeat Trends Changes in Placement). At times it is noted that a child/youth who remains in custody is no longer included in the monthly list.

It is understandable mistakes with data entry may occur. As such there must be practices and protocols in place to routinely check for errors and certainly review and make necessary corrections when a potential mistake is brought to attention. Despite concerns noted in reports from case reviews and annual reports, corrections have not been made.

²⁴Changes in placement are the number of times a child changes a placement setting but does not include changes in placement due to trial home visits, runaway, respite care or changes in a single foster family home's status, such as foster care to adoption.

The Council recommended 1 November 2020:

“Review data reporting to ensure that data provided is accurate, accounts for all children/youth in its custody and includes ongoing verification of data presented.”

Per CAPTA, CYFD’s written response to describe whether or how it will incorporate the recommendation was due **1 May 2021**.

CYFD Response 1 September 2021:

None.

SPECIFIC CASE REVIEWS JULY 2020 – DECEMBER 2022

Pursuant to the Act, the Council is authorized to conduct specific case reviews to fulfill the purpose of the Act. In New Mexico, case reviews are conducted through SCRBs. Each SCRB is comprised of trained members and each review is facilitated by Council staff. Following the adopted Quality Services Review model (see past Council annual reports), reviews include research of documents, CYFD policy and procedures, best practices, and receipt of confidential individual²⁵ perspectives.

The Act requires the Council to establish criteria for the designation of cases for SCRB review. Per the Council’s administrative rules, the adoption of priority criteria for case reviews is annually in the fourth quarter. Designated priority criteria for case reviews adopted by the Council in August 2020 included:

Designated Priority Criteria for Specific Case Reviews	
Placements in institutions or congregate care.	Number of changes in placements.
Youth aged 13 – 18.	Sibling groups/sibling splits.
Specifically required by an Interest Party or community member.	Follow up to past reviews.

Per the Council rules, at least one case is reviewed in each of the thirteen judicial districts each quarter. A case may represent one or more children/youth. CYFD organizes itself into five regions which encompass the thirteen judicial districts:

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²⁵Notification of opportunity to provide confidential input during a child/youth review is given to known biological/adoptive parents, legal guardians, foster parents, relatives, CYFD staff, legal representatives, service providers and Court Appointed Special Advocates (CASA).

Second Judicial District
Bernalillo

First Judicial District
Los Alamos
Rio Arriba
Santa Fe

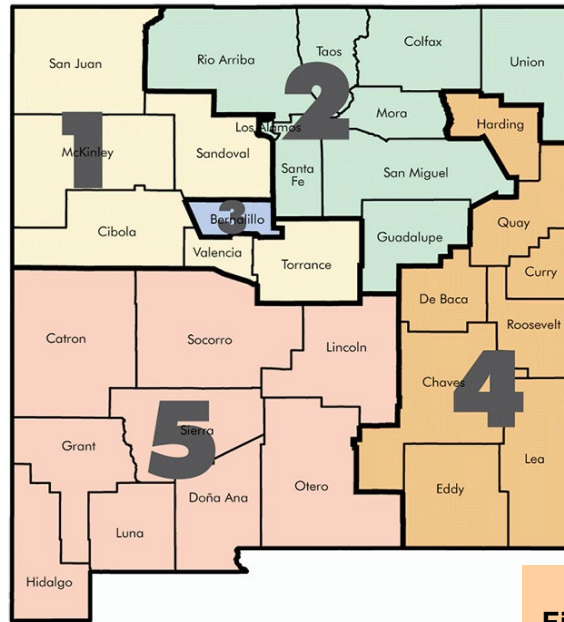
Fourth Judicial District
Guadalupe
Mora
San Miguel

Eleventh Judicial District
McKinley
San Juan

Thirteenth Judicial District
Cibola
Sandoval
Valencia

Seventh Judicial District
Torrance

Eighth Judicial District
Colfax
Union
Taos



Tenth Judicial District
DeBaca
Harding
Quay

Ninth Judicial District
Curry
Roosevelt

Seventh Judicial District
Catron
Sierra
Socorro

Sixth Judicial District
Grant
Luna
Hildago

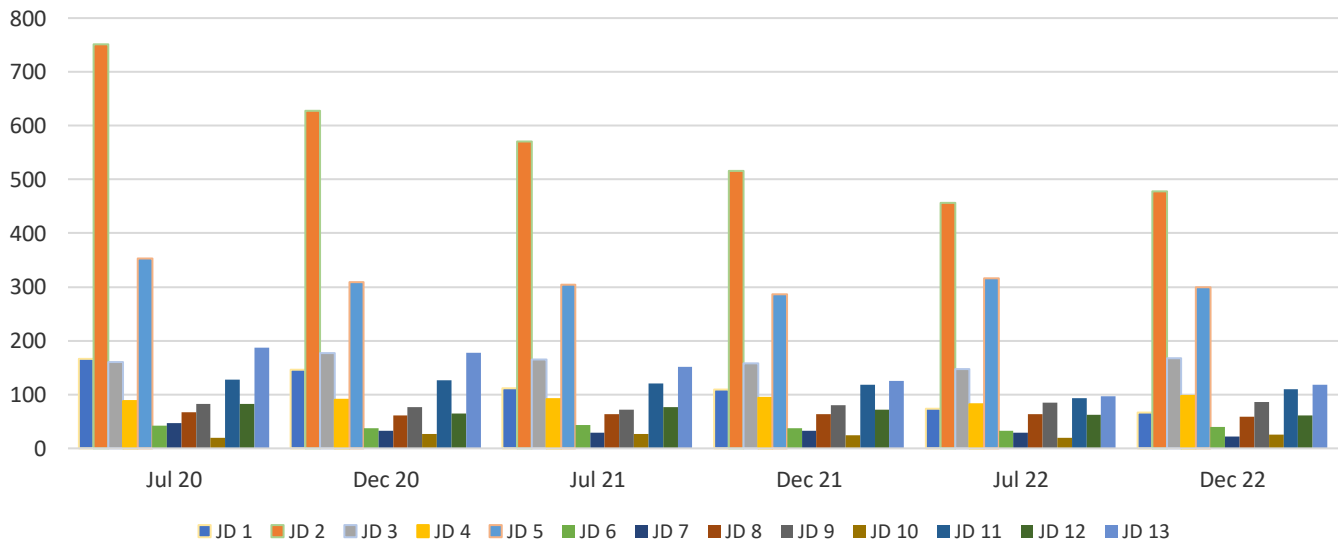
Seventh Judicial District
Catron
Sierra
Socorro

Third Judicial District
Doña Ana

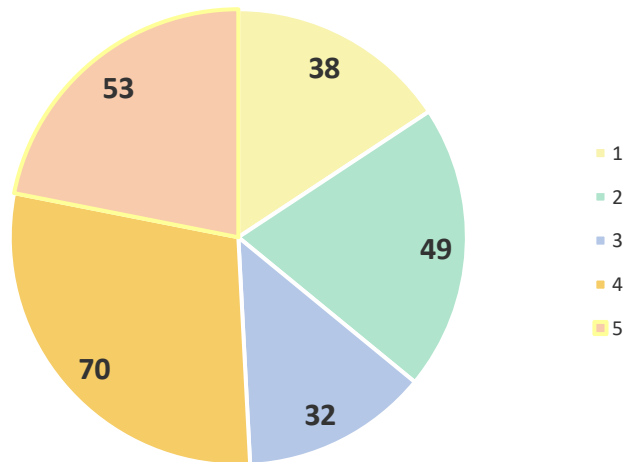
Twelfth Judicial District
Lincoln
Otero

Fifth Judicial District
Chaves
Eddy
Lea

Children and Youth In Custody by Judicial District



Number of Children/Youth Reviewed by CYFD Region



Two hundred forty-two (242) specific case reviews were conducted, entailing over 1200 interviews and reviewing hundreds of documents. Reviews included children and youth who,

- entered custody with:
 - Physical abuse, sexual abuse, and neglect by bio-parents, adoptive parents, relative caregivers or guardians.
 - Siblings.
 - Prior involvement of CYFD to include previous custody.
 - Bio-parents who were incarcerated.
 - Bio-parents with criminal charges pending.
 - Parents who are deceased.
- after entering custody have:
 - Permanent separation from one or more siblings.
 - Permanency plans of Reunification, Adoption, Permanent Guardianship, Permanent Planning Living Arrangement (PPLA).
 - Placement types of Trial Home Visit (THV), relative/fictive kin, pre-adoptive homes, regular foster homes, Therapeutic Foster Care homes (TFC), ARCA homes, Group Homes, Shelters, Residential Treatment Centers, Juvenile Reintegration Center, Detention and Independent Living.
 - Federal changes in placements ranging from 1 to 92.
 - Repeat maltreatment.
 - Parental rights terminated without adoption resources identified.
 - Parent pass away.
 - Reconnected with bio-parents whose parental rights have been terminated.
 - Medication prescribed.
 - Prolonged periods in the care of CYFD.
 - Changes in CYFD case workers.
 - Juvenile Justice involvement.

ABUSE AND NEGLECT PETITION AND ADJUDICATION

Per the Children's Code, when an abuse and neglect petition is filed and an adjudicatory hearing held, *'The court shall determine if the allegations of the petition are admitted or denied'*²⁶. In many instances it was noted in the specific cases reviewed that while multiple allegations were included in the abuse and neglect petition to include physical abuse, neglect and sexual abuse, the court did not make findings on all the allegations but would accept the respondent's plea of no contest to the generic neglect of *'children are without proper parental care and control or subsistence, education, medical, or other care or control necessary for the Children's well-being because of the faults or habits of the Children's parents'* as well as *'whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity'*.

For example, in one case, a bio-parent, aware of two children experiencing sexual abuse by the other parent while in their care, was alleged in the abuse and neglect petition to have abused and neglected the children as defined within NM Stat § 32A-4-2(B)(1)(2)(3)(4) and (G)(2).

B. "abused child" means a child...

- (1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;
- (2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;
- (3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;
- (4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health;

G. "neglected child" means a child...

- (2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;

The adjudicatory order states this bio-parent did not contest the neglect allegation of NM Stat § 32A-4-2(G)(2) with the factual basis given *'the bio-parent due to substance abuse issues failed to provide proper parental care and control to protect the children from sexual abuse'*. The allegations of abuse as defined within NM Stat § 32A-4-2(B)(1)(2)(3)(4) were not addressed in the adjudicatory order as to be dismissed, founded, or unfounded.

In another example, the abuse and neglect petition alleged bio-parents abused and neglected four children as defined above in NM Stat § 32A-4-2(B)(1)(4) and (G)(2); an additional allegation of abuse (B)(2) specific to one of the children and an additional allegation of neglect (G)(3) specific to one child and one bio-parent.

G. "neglected child" means a child...

²⁶ NM Stat § 32A-4-20(G).

(3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm.

The adjudicatory order stated the bio-parents did not contest neglect of NM Stat § 32A-4-2(G)(2) for all four children with the factual basis given *'unsanitary and unsafe conditions in the home, parental substance abuse and physical striking of child'*. The adjudicatory order did not address the other allegations in the abuse and neglect petition as to be dismissed, founded, or unfounded.

CYFD policy and procedure allows settlement at the adjudicatory stage of a case which involves a stipulation (admission or plea of no contest) as to the case-specific underlying factual basis of the allegation. However, not all adjudicatory orders include the case-specific underlying factual basis and may just reference the Affidavit filed with the petition which gives support to all allegations in a petition, or the order may be silent on the case-specific factual underlying factual basis.

The legal ramifications of the adjudicatory order not including a finding on each allegation in an abuse and neglect petition are not clear. In addition, not having findings on all allegations and a case-specific underlying factual basis in a plea of no contest may negatively impact case planning and identification of resources to resolve the case-specific underlying factual basis the child/youth is in custody.

PRIOR CYFD INVOLVEMENT

Documentation provided for specific case reviews indicates that 95% of the caregivers for the children/youth reviewed had prior involvement with CYFD, including 16% with one or more previous episodes of CYFD custody. Prior involvement also included substantiated and unsubstantiated findings of investigations and referrals to services only to note at subsequent investigations the family may have declined services or did not follow up.

In a past report, the Council noted a gubernatorial executive order in 2014 required CYFD to conduct a collaborative review on *'any subsequent investigation'* of a family whom CYFD has already investigated twice. The executive order defined this review as a *'high-level supervisory case analysis involving the County Office Manager, Supervisor, Caseworker, and the Children's Court Attorney'*. The procedure created from this executive order did not indicate the need to conduct these reviews on all subsequent investigations after the second investigation and did not provide expectations of the review or a timeline to conduct the review other than prior to case closure. While the procedure indicated the results of these reviews are documented in the case file and relevant family information is to be entered into a survey to *'continually assess factors leading to multiple referrals'* documentation was not provided during specific case reviews to demonstrate adherence to the procedure or its impact on a case or the system.

The Council recommended **9 November 2018**:

"Revise 8.10.3 PR 18 to include (1) independent team review for cases in which there have been two previous investigations; (2) established timelines to conduct and conclude the review, (3) specific considerations during the review and (4) documentation of the conclusions of the review and the impact on the determination of the current investigation."

Per CAPTA, CYFD's written response to describe whether or how it will incorporate the recommendation was due **9 May 2019**.

CYFD's Response 31 October 2019:

"The report recommends an "independent team review for cases in which there have been two previous investigations" and other guidelines and staffing for such cases. We currently have an executive order in effect that provides mandatory guidance on reviewing and staffing cases with three or more investigations similar to what is recommended in the report. Unfortunately, that type of review has shown no impact on repeat maltreatment or other positive outcome measures and, indeed, has resulted in a case backlog due to the inefficiencies inherent in such protocols. We believe that providing a differential response to families that have repeat referrals will lead to increased safety and child well being. We are currently working to pilot such a differential response for these families to provide intensive case management and supportive services, which we think will lead to better outcomes."

In March 2020, CYFD issued a Program Instruction Guideline²⁷ re *'updates to investigations procedures-PR 18: Families with More than Two Investigations'*. This guideline removes the previous requirement of the CYFD County Office Manager conducting a "3+ Staffing" on cases with more than two prior reports. The guideline provides the expectation that the CYFD supervisor and investigator will have pre-initiation staffing prior to initiation of the case. However, completing the pre-initiation staffing form is optional. While this staffing is *'required for all cases, not just those with more than two or more referrals'* and is to be documented, *'investigation supervisors and workers must pay closer attention to those cases with two or more referrals'*. Documentation from any staffing has not been included as part of the documents provided during specific case reviews.

On 29 September 2022, CYFD re-issued its Service Matrix Update via a Memorandum for Information (MIF). The MIF clarifies expectations during CYFD's investigation phase to include not closing an unsubstantiated case when the assessment has determined a child is safe, but the risk is high, until a 'warm handoff' has been completed with the family and confirmation of family engagement. CYFD must stay involved in case management of safety plans which cannot exceed 21 days and should an assessment after 21 days find the child is unsafe, legal intervention must be pursued. It will take time for this practice to be implemented; future reviews may reflect the impact of this process.

As of this report, CYFD indicated it is *'still working on a differential response'*.

REPEAT TRENDS

In past reports, the Council noted trends of inadequate case management, medication oversight, delivery of youth services, tracking changes in school settings as well as placement instability and data accuracy with recommendations intended to improve CYFD's discharge of its child protection responsibilities.

In the specific case reviews during this period, these same trends were noted. Despite reports provided to CYFD following specific case reviews, follow up reviews did not indicate action had been taken to remediate concerns in previous reports.

²⁷Program Instruction Guideline 03-2020-#1 dated 19 March 2020.

CASE MANAGEMENT

The Council's previous reports brought attention to case planning for children, youth and families. In its report dated 9 October 2018 the Council noted:

"The case plans reviewed often did not follow procedures or best practices for case plans. For example, objectives were not always behavioral or measurable and may or may not have related to the reason(s) children were in custody. Further, there was little to no evidence that the case plans were completed with the caregiver(s), or that they were signed by the caregiver(s), nor did they appear to have been updated when there were changes to a case or prior to a judicial review."

The Council recommended 9 October 2018:

"CYFD create and distribute work plans for case planning for children in custody of CYFD to include measurable objectives, evaluation and specific formats for Transition Home Plans, Life Skills Plans and Individualized Adoption Plans."

Per CAPTA, CYFD's written response to describe whether or how it will incorporate the recommendation due **9 April 2019**.

CYFD's Response 31 October 2019:

None.

Subsequent annual reports and in reports provided following specific case reviews, it was noted that CYFD's case planning efforts do not reflect best practices or its own policy and procedures as something to be developed in concert with bio-parents and youth. Further, it was noted by the Council that CYFD's reports to the courts did not lend themselves to differentiating when a youth turns 14 and should receive specific assessments and a life skills plan; nor do CYFD's reports to the court provide information on changes in school settings, oversight of medication and transition home plans.

The Council recommended 1 November 2020:

"Establish a workgroup to revise standard reports to the court; members of the workgroup should at a minimum include representatives of Council Staff, CYFD Quality Assurance Unit, CYFD staff (i.e., direct worker, supervisor), youth, and legal representatives (i.e., Guardian ad Litem, Youth Attorney, Respondent Attorney, CYFD Children's Court Attorney)."

Per CAPTA, CYFD's written response to describe whether or how it will incorporate the recommendation due **1 May 2021**.

CYFD Response 1 September 2021:

"Changes are being made to court reports to address: visitation frequency and quality as well as psychotropic medication monitoring and reporting."

None of the court reports reviewed were on revised templates and Council staff have not been included in any discussions regarding changes to standard reports to the court.

Requirements of the Kevin S. Settlement include CYFD and the Human Services Department developing and implementing an Individualized Planning Process (hereinafter “IPP”), which is *‘an individualized, trauma-responsive approach that is strengths-based, family and youth-focused, and includes the family as an equal partner whenever possible’*. The phasing in of the IPP was intended to begin in March 2022 and completed by 1 December 2022²⁸.

The IPP has a core component of developing a case plan *‘that is individualized and tailored to meet the unique challenges and needs of the family’* and *‘what the parents must do to be able to care for and protect their children’*. This process includes expectations that the CYFD case worker will be aware of the impact of implicit bias towards families, be culturally aware and have skill in trust-building, exploring, focusing, guiding, reflecting, facilitating and developing goals and action steps that are specific, measurable, achievable, relevant and time-limited (SMART)²⁹.

It is not clear if the resultant case plan from the IPP will be different than what is currently used by CYFD. None of the specific cases reviewed reflected the individualized planning process, however with the rollout believed to have been recently completed, future reviews may reflect this process.

CHANGES IN PLACEMENT

Not every change in a child’s placement is counted as a federal change in placement. Changes in a foster parent home to a pre-adoptive home is not counted as a change in placement nor is an episode of runaway, trial home visit, or temporary absence from the placement such as visitation with a sibling, relative or other caretaker, hospitalization for medical treatment, acute psychiatric episodes or diagnosis, respite³⁰.

Per NM Stat § 32A-4-14, when there is a change in placement CYFD is to provide 10 days advance written notice to all parties and the court of the *‘factual grounds supporting the change in placement’* unless there is an emergency. In that case, written notice is required within three days after the placement change. The Children’s Code does not require written notice for removal from temporary emergency care, emergency foster care or respite care, and no notice is required to anyone but the child and their attorney when a change in placement has been made at the request of the child’s foster parents or substitute care provider.

CYFD policy and procedures require written notice to the court and interested parties for changes in placement 10 days in advance of a placement change unless an emergency exists and then written notice is required within 3 days of the change in placement. Written notice is not needed for *‘removal of a child from respite’*³¹. CYFD procedures do not provide guidance as to the information required in the notice.

The specific cases reviewed did not always have notices filed and of those filed, there was inconsistency in including factual grounds for the change and some would state at the request of the provider. Concerns regarding accuracy in change of placements and placement type have been raised in past Council reports (see Monthly Case Lists) with the same concerns continuing in this period of review.

Examples from specific cases reviewed include a youth placed in detention for a considerable length of time yet CYFD reported the youth’s status as runaway. In other cases, CYFD knew of a youth’s location, for example residing in an unlicensed home and although the federal guidance in such an instance is to *‘code the placement setting as the*

²⁸<https://www.cyfd.nm.gov/kevin-s-settlement/2022-kevin-s-annual-report-exhibits-2/>.

²⁹The Child Welfare Policy & Practice Group Preparing and Facilitating Individualized Planning Process NM CYFD Participant Workbook, revised November 2021.

³⁰Children’s Bureau Child Welfare Policy Manual 1.2B.7 AFCARS, Data Elements and Definitions, Foster Care Specific Elements, Placements, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=150

³¹ 8.10.8.10(H) NMAC; PR 10 Out of Home Placement, 8.10.13.

definition that most closely resembles the placement setting', the monthly list CYFD provided has the youth's placement as runaway.

A foster parent is allowed and encouraged to use respite when the child is temporarily absent from their home. This is not counted as a change in placement, but in specific cases reviewed it may be being counted. For example, in a case reviewed this period, CYFD reported four children had 13-14 changes in placement yet based on information and belief, these children had been in the same foster home since their entry into custody 28 months earlier.

As noted in the previous section on monthly case lists, although this has been brought to the attention of CYFD, changes have not been made.

YOUTH SERVICES

CYFD has policy and procedure regarding services to youth in its care regardless of the permanency plan for the youth.

In its annual report dated **31 October 2019**, the Council noted:

"Case reviews specific to youth aged 14 and older found that the youth services policies and procedures were not implemented according to policy and procedure. For example, of the youth reviewed, youth did not have evidence of the Independent Living Assessments being completed according to procedure, or an updated case plan with a clear component of a Life Skills Plan established in accordance with procedures. Of particular note was the lack of youth involvement in these processes, a disconnect between the PPW and YTS and a lack of understanding by CYFD workers and Youth Attorneys that youth services to prepare a youth to successful transition to adulthood is required for all youth regardless of permanency plan or placement."

CYFD provided the following response, **dated 26 May 2020**:

"CYFD is currently in the late planning stages of restructuring how we work with older youth in foster care. You may be aware that we are extending foster care services for youth up to age 21, using a phased-in approach that begins in FY21. To serve these youth and young adults, we will be implementing a new practice model that is relational rather than transactional, with clearly operationalized goals and principles designed to improve outcomes. As this new model will require careful consideration of caseloads and specialized training, our hope is that youth aged 16-21 will have one worker assigned to them, as opposed to the current structure in which the Youth Transition Services worker merely augments the primary case management that is provided by the youth's Permanency Planning Worker."

The specific case reviews conducted July 2020 – December 2022 did not demonstrate youth being provided services in accordance with policy and procedure nor did youth aged 16-18 have one worker assigned. Rather, specific case reviews found youth not being aware of their rights, not involved in their case planning, and at times, having fractured relationships with their assigned CYFD caseworker.

In one instance of a fractured relationship, the efforts of the youth and assigned Youth Attorney resulted in the court issuing an order supporting a change to a different CYFD county office as the CYFD office assigned had *'not complied with youth transition services'*, that *'independent living assessments and life skills plan'* were developed two years late and the youth needed *'to be with a county office where someone is keeping track and supporting'*.

PSYCHOTROPIC MEDICATION OVERSIGHT

The Administration for Children and Families issued an Information Memorandum in 2012 regarding *Promoting the Safe, Appropriate, and Effective Use of Psychotropic Medication for Children in Foster Care*³². The Child and Family Services Improvement and Innovation Act clarified that ‘oversight of prescription medicines must include an outline of protocols for the appropriate use and monitoring of psychotropic medications’. The memorandum notes ‘that the development of a comprehensive approach to psychotropic medication oversight requires high levels of collaboration among child welfare agencies, professionals, organizations providing foster care and mental health services, children who are recipients of child welfare services, and their families’ and as such ‘it will also be important to intentionally craft mechanisms to actively engage and involve a broad range of stakeholders’.

Past Council reports have noted concerns with CYFD’s effectiveness of discharging its child protection responsibilities in regard to oversight of medication.

The Council recommended **9 October 2018**:

“Provide documentation of psychotropic medication oversight as described in 8.10.8 NMAC PR 17(7).”

Per CAPTA, CYFD’s written response to describe whether or how it will incorporate the recommendation was due **9 April 2019**.

CYFD’s Response 31 October 2019:

“We are currently working with the National Center for Youth Law to revamp our psychotropic medication protocols and practices. More information on this work will be forthcoming.”

The Council recommended **1 November 2020**:

“CYFD revise its standard report to the court to include a section on diagnoses and medications prescribed, the reason for the medication, dosage, dates of medication review and confirmation fully informed consent was provided.”

Per CAPTA, CYFD’s written response to describe whether or how it will incorporate the recommendation was due **1 May 2021**.

CYFD’s Response 1 September 2021:

“Changes are being made to court reports to address: visitation frequency and quality as well as psychotropic medication monitoring and reporting.”

In October 2020, CYFD issued Program Instruction Guideline (PIG) 10-2020-#5 regarding Permanency Planning Procedure 17 – Medical and Behavioral Health & Psychotropic Medication. This guideline included the requirement that “prior to every court hearing, the PSD worker documents, within the court report, the following [22] questions... .

In November 2021, CYFD issued Program instruction Guideline 11-2021-#20, replacing PIG 10-2020-#5. This guideline continued the requirement of the PSD worker documenting within the court report prior to every court hearing questions which expanded from 22 to 24 questions.

³² <https://www.acf.hhs.gov/cb/policy-guidance/im-12-03>.

In December 2021, CYFD issued Program Instruction Guideline 12-2021-#21 which replaced PIG 11-2021-#20. No changes were made to the expectation of the PSD worker providing in every court report response to the following 24 questions:

- 1 What other supportive therapeutic interventions are being used? Ask for details, as appropriate. (Were these interventions tried without the medication first?)
- 2 Who has assessed or evaluated this child? (Was there an evaluation?)
- 3 How has this child or youth been assessed or evaluated?
- 4 What medication has been prescribed by a psychiatric prescriber?
- 5 What other medications or substances have been prescribed by another prescriber or are being used by the child or youth?
- 6 Why has this child or youth been prescribed a psychotropic and what specific symptom/s is this medication designed to address?
- 7 How many psychotropics have been prescribed?
- 8 What dosage? Is this the smallest possible dosage? If not, why?
- 9 Is it off-label for this particular child or youth (age, symptoms, etc.?) and if so, is it prescribed for a good, defined reason?
- 10 Was a history of the child or youth gathered from parents and past caretakers for the child or youth?
- 11 Were the parents asked to provide input on the use of medication, and have they?
- 12 How has the child or youth 14 years or older, or the guardian for the child or youth under 14, given consent?
- 13 Was the advisement couched in developmentally appropriate language and in a language the child/youth understood? Was the consent informed?
- 14 Who gave permission for this child or youth to take this medication?
- 15 Is this child or youth able to comply with the proper use of this medication?
- 16 Was there a second opinion, if so, who provided it?
- 17 Who is monitoring this child or youth?
- 18 What monitoring for effectiveness is occurring? What benefit, if any, has occurred?
- 19 What side effects are possible? What side effects have been seen?
- 20 What monitoring for side effects is occurring?
- 21 Has this child or youth gained or lost weight?
- 22 Does this child or youth have involuntary movements?
- 23 What duration is expected for this treatment and why?
- 24 When is the child or youth's next psychiatric or medical appointment?

It is not clear how the responses to the questions are expected to be evaluated. Further, it is not clear if CYFD has measurable goals regarding psychotropic medication of children and youth in its custody, such as intentional planning to reduce reliance on prescribed medication for each child/youth.

Of the specific cases reviewed, approximately 76% of the children/youth were prescribed one or more medications, yet CYFD's reports to the court prior to court hearings included responses to the 22/24 questions in three instances. In two of those instances, it was not clear that the children had updated assessments and diagnoses for effective behavioral interventions.

EDUCATIONAL STABILITY

A concern noted in a past Council annual report included changes in school settings that may not have been in accordance with state and federal requirements³³. In addition, the documentation provided in case plans and progress reports to the court does not include the history of school settings for a child/youth.

A child/youth who enters the custody of CYFD should remain in their school of origin unless a determination has been made vis-à-vis a Best Interest Determination Meeting; a collaborative student-centered discussion amongst the child/youth's team to reach consensus³⁴. This applies when changes in placement occur after entering custody. This meeting is to be documented on the Education Best Interest Determination Form provided to all parties³⁵, however, documentation was not provided in the case specific reviews conducted.

The Council recommended **1 November 2020**:

"In collaboration with the Public Education Department (PED), co-lead a workgroup to develop protocols to ensure that changes in school settings meet state and federal requirements."

Per CAPTA, CYFD's written response to describe whether or how it will implement the recommendation was due **1 May 2021**.

CYFD's Response 1 September 2021:

"CYFD and the New Mexico Public Education Department collaborated on the implementation of the Every Student Succeeds Act as part of a statutorily required taskforce. Members of the committee included a District Court Judge, foster parent, school personnel from Santa Fe and Espanola public schools, as well as CYFD and PED representatives."

The response is not clear as to what task force was created for what purpose, when it was created and resultant recommendations. Suffice it to say CYFD's response does not address the concerns specifically noted in the annual report and case reviews still cannot determine CYFD's effectiveness in its discharge of child protection responsibilities related to educational stability.

The Council recommended **1 November 2020**:

CYFD revise the standard reports to the court to include an ongoing listing of changes in schools, dates of Best Interest Determination Meeting completed, the basis for the change of schools as well as to recognize success when there may be a change of placement but not a change in school.

Per CAPTA, CYFD's written response to describe whether or how it will incorporate the recommendation was due **1 May 2021**.

CYFD's Response 1 September 2021: None.

³³Fostering Connections and Increasing Adoptions Act of 2008; Every Student Succeeds Act as amended through P.L. 114-95; Sections 22-12-10 and 22-13-33 NMSA 1978.

³⁴NMPED Providing Educational Stability and Supporting Students in Foster Care Every Student Succeeds Act (ESSA) <https://webnew.ped.state.nm.us/wp-content/uploads/2018/09/PED-Foster-Care-Guidelines-with-NMAC-Trans.pdf>

³⁵CYFD Program Instruction Guideline 08-2019-#5 Updates to 8.10.8 Permanency Planning Procedures-PR 18: Education.

STATUS OF SPECIFIC CASE REVIEWS JULY 2020 – DECEMBER 2022 AS OF MARCH 2023

Status of Specific Case Reviews July 2020 – December 2022 as of March 2023							
Children/Youth Reviewed	Follow Up Review	Active	Dismissed				
			Reunification	Adoption	Perm Guard	Emancipation	Other
242	56	102	18	34	5	26	1

REUNIFIED

Eighteen children/youth were reunified with a bio- or adoptive parent. Age at custody onset ranged from one year nine months to fifteen years five months. The age at dismissal ranged from three years ten months to seventeen years two months. Length of custody ranged from 20 months to 85 months. Federal changes in placements ranged from 1 in 24 months to 17 changes in 15 months.

One youth who was reunified in this time period with an adoptive parent, re-entered custody a month after dismissal: a third episode of custody. Since re-entering custody, the youth's case has been reviewed and it has been noted that the concerns and recommendations provided in a report prior to dismissal were not remediated. Since re-entering custody, this youth has experienced 13 changes in placement in 24 months and is expected to emancipate in 2023.

Two siblings were reunified with a bio- and stepparent despite concerns of substantiation of sexual abuse, the re-victimization of sexual abuse, and one child being in a residential treatment center for 24 months with no discharge plan. The dismissal order contained false information, such as the bio-father had never been located which CYFD reports to the court indicated he had, and that both children had been on a trial home visit when in fact one child was still in an institution at the time of dismissal and had never been on a trial home visit. When the concern with the dismissal order, especially stating a child in CYFD's care had been on a successful trial home visit when in fact was in an institution, was brought to the attention of CYFD shortly after the order was filed, CYFD responded it saw *'no reason to amend the dismissal order'*. It is not known if allegations of abuse or neglect have been referred to CYFD post-dismissal.

A sibling group of four with investigations prior to entering custody was reunified with their bio-parent and the case was dismissed less than three months after the trial home visit began. It is not known if allegations of abuse or neglect have been referred to CYFD post-dismissal.

Two siblings of a sibling group of three reunified with their bio-parents without their sibling who remains in the care of CYFD with a Permanency Plan of Adoption. It is not known if allegations of abuse or neglect have been referred to CYFD since the two siblings were dismissed.

A child entered custody after being voluntarily placed with a relative who returned the child to a bio-parent. After entering custody, the child was placed with the same relative who was subsequently arrested for child pornography involving the child. While awaiting hearings on termination of parental rights, the child's permanency plan was changed from Adoption to Reunification and the child was placed on a trial home visit when the foster placement ended. It is not known if allegations of abuse or neglect have been referred to CYFD since the case was dismissed.

A sibling group of four believed to be in their third episode of custody were placed on a trial home visit although the court noted the bio-parent had not yet demonstrated ability to supervise the children and subsequently dismissed. It is not known if allegations of abuse or neglect have been referred to CYFD post-dismissal.

A youth was reunified with a bio-parent although the concerns which led to the youth being in custody had not been alleviated and CYFD indicated a transition home plan *'has proven to be unsuccessful'*. Further, CYFD reported this youth as a runaway although the youth was residing part or full-time with the bio-parent. CYFD's report to the court was incomplete with sections left blank and included names of children not related to the proceeding. The youth turned age 18 ten months after dismissal.

ADOPTED

Thirty-four children/youth had adoptions finalized. Age at custody onset ranged from five months to fourteen years seven months. Age at adoption ranged from three years two months to seventeen years nine months.

Length of custody ranged from 25 months to 132 months. Federal changes in placement ranged from 1 in 25 months to 17 changes in 87 months. Two youth adopted entered custody with siblings who exited custody before them via separate adoptions or were dismissed to the custody of a non-custodial bio-parent. Seven of the children/youth adopted exited custody without siblings who remain in the care of CYFD.

One youth adopted entered custody at age 8 years 11 months with an older sibling due to the whereabouts of the bio-parents not known. Twelve months later the older sibling was dismissed to the custody of their shared bio-mother while the other child remained in the care of CYFD. At 11 years 3 months of age, parental rights were terminated. At age 15, following 17 changes in federal placements, the youth was placed for adoption with the bio-mother whose rights were terminated. Eighty-seven months after entering custody, the youth was adopted at age 16 years 3 months by the bio-mother who had parental rights terminated. The adoption was finalized with an adoption subsidy.

A sibling group of two entered custody at ages 7 years 2 months and 4 years 2 months from the care of someone who was not their bio-parent. Other than their first 11 days of custody, they remained in a foster home placement which became their adoptive home 53 months after they entered custody and 6 months after the appeal of parental rights was exhausted.

A sibling group of three entered custody at ages 5 years 8 months, 4 years 5 months, and 3 years 1 month and placed with a relative. Twenty months after entering custody both bio-parents relinquished their parental rights to all three children whose adoption was finalized six months later with the relative with whom they had resided for 25 months.

Any subsequent allegations of abuse or neglect following dismissal due to adoption are not known.

PERMANENT GUARDIANSHIP

Five children/youth were granted permanent guardianship: four with relatives and one with a foster care provider.

Age at custody onset ranged from one year six months to sixteen years two months. The age at the time of dismissal ranged from five years four months to seventeen years four months. Only one youth entered custody from the care of a bio-parent.

Length of custody ranged from 10 months to 45 months. Federal changes in placements ranged from 1 in 22 months to 13 changes in 40 months.

Two of the children entered care as a part of a larger sibling group; two siblings exited custody via reunification with a relative caregiver. One youth entered custody as a sibling group of three; two siblings exited custody via adoption.

Any subsequent allegations of abuse or neglect following dismissal are not known.

EMANCIPATED

Twenty-six youths reviewed emancipated at age 18. None of the youth had been given Youth Services in accordance with CYFD's policy and procedures nor had psychotropic medication oversight been demonstrated.

Age at custody onset ranged from six years ten months to sixteen years one month. Eight youths were placed in the custody of CYFD from the care of someone other than a bio-parent. Four youths had bio-fathers who were not identified, and eight youths had a bio-parent pass away before or after entering custody. Ten youths were emancipated with parental rights to them intact.

Length of custody ranged from 23 months to 134 months. Federal changes in placement ranged from 6 changes in 28 months to 92 changes in placement in 62 months. Last placement listed included:

- residential treatment centers for five youths.
- detention for one youth.
- shelters for three youths.
- group home for one youth.
- foster home for seven youths.
- fictive kin for two youths.
- independent for four youth; and
- runaway for three youths although it is believed the location of at least two of the youths were known.

Twelve of the youths entered custody with siblings; none exited custody with all the siblings with whom they entered. Eight of the youths have been permanently separated from their siblings who exited CYFD custody via adoption without them. One youth had siblings returned to their shared bio-parents but experienced termination of parental rights.

One youth entered custody as a sibling group of six; five siblings exited custody via three separate adoptions. Five youths exited custody without siblings who remain in the care of CYFD. In two instances, two youths were emancipated with a sibling.

As youth who are emancipated at age 18 are no longer in the custody of CYFD, documentation is not readily available to confirm if a youth is actively participating in Fostering Connections. Based on information belief, at least seven youths are participating in Foster Connections.

OTHER

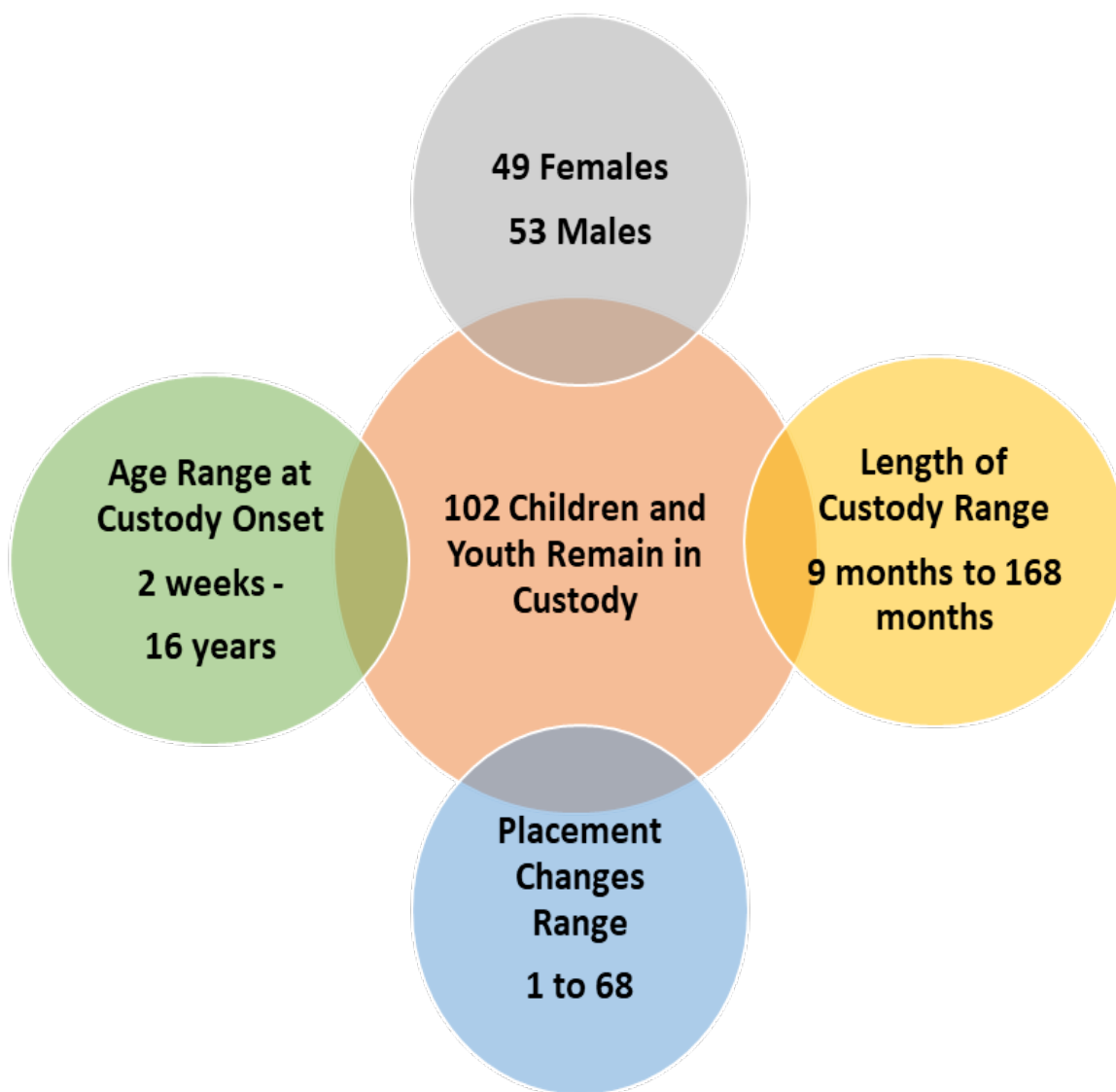
In a case that was dismissed, the child came into custody from the care of a relative at age 9 years 4 months. Subsequently, both bio-parents, who had a history of seven investigations by CYFD and were not providing primary care for their child, relinquished their parental rights. One bio-parent passed away after relinquishment.

This case was designated for SCRB review in 2018, 2019, 2020, 2021 and 2022. At each review concerns were noted of placement of multiple institutional settings, placements not meeting the needs of the child/youth, the child/youth not consenting to placements, medication oversight not demonstrated, and youth services not being delivered in accordance with CYFD's policy and procedure. One report noted the youth may be facing criminal charges and the need for the juvenile justice and protective services systems to collaborate. At each follow up review none of the concerns were remediated.

After being in the care of CYFD for 71 months, experiencing 37 changes in placement, the youth, aged 15 years 4 months was dismissed from detention with 6 months unsupervised probation. The youth was released to the custody of the surviving bio-parent residing in another state and whose parental rights had been terminated. CYFD dismissed the abuse/neglect proceeding, saying it *'had no choice'* in doing so as it did not have jurisdiction in the other state. No assessments of the placement were conducted. Further, other than a court order releasing the youth from a detention center to the custody of a named person, documentation was not provided as to what legal authority the named person has with the youth, especially given parental rights to the youth had been extinguished.

ACTIVE

As of March 2023, 102 of the children/youth reviewed July 2020-December 2022 remain in the care of CYFD. Follow up to past reviews will be conducted and status updates provided in future reports.



APPENDIX I

SUBSTITUTE CARE ADVISORY COUNCIL

The Act established a nine-member Council; four members are the Cabinet Secretary or designee of the Department of Finance and Administration (DFA), Department of Health (DOH), Human Services Department (HSD), Public Education Department (PED) and five members are appointed by the Governor.

STATE AGENCY	CABINET SECRETARY OR DESIGNEE	DATE
Department of Finance and Administration	RENEE M. WARD , MHA Deputy Cabinet Secretary (COUNCIL VICE-CHAIR)	May 2019
Department of Health	PATRICK ALLEN Cabinet Secretary	April 2023
Human Services Department	BETINA MCCracken Deputy Director Child Support Enforcement Division	January 2023
Public Education Department	DANIELA ROMERO State Ombudsman And Foster Care Education Point of Contact	December 2022
GOVERNOR APPOINTED	APPOINTEE	DATE
Public Member with child welfare expertise	SEAN SCATES , (COUNCIL CHAIR)	September 2022
Public Member with child welfare expertise	Vacant	
Public Member age 18-30 previously in substitute care	HOLLY HEMMINGER	September 2022
Public Member age 18-30 previously in substitute care	Vacant	
Children's Court Judge	THE HONORABLE ALMA ROBERSON Second Judicial District	November 2022

SCAC ADVISORY COMMITTEE³⁶

OCTOBER 2020 – PRESENT

<u>NAME</u>	<u>COUNTY</u>
MARIA ORTIZ BUSTOS	DOÑA ANA
JACK CARPENTER	TAOS
MARY CARR	EDDY
YVONNE TALLENT	SAN MIGUEL
NANCY TREAT	SANTA FE
VACANT	

³⁶Pursuant to Chapter 32 [32], Article 8 NMSA 1978, Citizen Substitute Care Review Act the Council appoints by 1 October of each year, a 6-member committee to one-year renewable terms, to advise on matters related to substitute care.

APPENDIX II

COUNCIL STAFF

DIRECTOR: SHELLY A. BUCHER, LMSW

Ms. Bucher serves as the Director for the Council. She has been in this position since October 2016 having previously administered a contract for the Citizen Substitute Care Review Act through New Mexico State University. Ms. Bucher holds a Master of Social Work with a concentration in Administration from the University of Kansas and a Bachelor of Social Work, Summa Cum Laude and a BS in Human Development and Family Studies from Kansas State University, Summa Cum Laude.

Ms. Bucher has 33 years of child welfare experience; over 20 years of which are in NM. Past positions include:

Director, Southwest Region National Child Protection Center at NMSU.

Interim Director, School of Social Work NMSU (3 years).

General Inspection Specialist, European Command Headquarters, Stuttgart Germany.

Relocation Readiness Program Manager, Army Community Services, Stuttgart Germany.

Settlement Administrator, Kansas Department of Social and Rehabilitation Services (SRS).

Director, Child Development Center, Saudi Arabia.

Social Worker (Investigations/Foster Care), KS SRS.

COORDINATOR: KIMBERLY ANGUIANO, BSW

Ms. Anguiano joined the Council Staff in July 2018 after completing an academic year of internship assisting Council Staff. Fully bilingual in Spanish, Ms. Anguiano graduated with honors from New Mexico State University with a Bachelor of Social Work and Minors in Counseling and Educational Psychology and Gender and Sexuality Studies.

COORDINATOR: MARY YOUNGER

Ms. Younger joined the Council Staff in October 2016 after serving as coordinator of citizen review boards for two years. She has 14 years of child welfare experience, including past positions of Volunteer Coordinator for the Eddy County Fifth Judicial District CASA (Court Appointed Special Advocate) program and Detention Officer for the Eddy County Detention Center.

ADMINISTRATIVE ASSISTANT: RAYMUNDO "RAY" VILLEGAS

Mr. Villegas is an Air Force veteran and retired US Postmaster who, since October 2016, has been sharing his knowledge and skills to organize and maintain resources to support the functioning of Council Staff. Mr. Villegas is from Deming, NM and attended Western New Mexico University.

APPENDIX III



NEW MEXICO FOSTER CHILD AND YOUTH BILL OF RIGHTS

Every child in the foster care system is endowed with the rights inherently belonging to all children. In addition, because of the unique circumstances facing foster children, special safeguards, resources and care are also necessary. Below you will find a list of rights that are to be given to every child and youth in custody of the Children, Youth and Families Department (CYFD). These rights must be explained by the caseworker to every child and youth in a manner in which they can understand. These rights are to be reviewed, in detail, upon entering custody and at a minimum of every three months. Additionally, these rights are to be clearly posted in all CYFD and service provider offices. They are to be provided to all staff working with foster children and youth, and to all foster parents.

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| <ol style="list-style-type: none"> 1 To be informed of your rights in foster care by your caseworker and to receive a list of those rights in written form. 2 To have your privacy protected and your right to confidentiality adhered to, as outlined in the New Mexico Children's Code. 3 To be explained why you came into foster care and why you are still in foster care by a representative of CYFD. 4 To be free from physical, sexual, emotional or other abuse, including corporal punishment. 5 To stay safe and avoid exploitation. 6 To advocate for yourself and to speak to persons involved with your case without negative repercussions. 7 To make a report to Statewide Central Intake (1-800-797-3260) if you feel you are being abused and/or neglected. 8 To be represented by a guardian ad litem or youth attorney in all judicial matters (hearings and mandatory meetings) conducted in your abuse/neglect case so that your interests are safeguarded; to attend and participate in all court hearings as coordinated through your attorney. 9 To be informed of how to contact your caseworker and other professionals involved in your case. 10 To contact your attorney, caseworker and CASA when you want. 11 To have a minimum of at least monthly visitation with your caseworker, which includes private time between yourself and the caseworker. | <ol style="list-style-type: none"> 12 To receive medical, dental, vision and behavioral health services. 13 To refuse medical and behavioral health services and medications, unless court ordered, after age 14. 14 To live in a safe, healthy and comfortable home where you are treated with respect. 15 To have foster parents who are screened, trained and licensed, and who receive adequate support and supervision from CYFD and/or private agencies. 16 To receive adequate and healthy food, adequate clothing and appropriate personal hygiene products. 17 To have all your personal belongings secure and transported with you. 18 To have a permanent plan for placement, to participate in developing this plan, and to have choice in placement or the right to request a placement change. 19 To be placed in a home with your siblings who are in custody unless it is contrary to your safety and/or wellbeing. 20 To maintain regular contact with your siblings, whether or not they are in custody, unless it is contrary to your safety and/or well-being. 21 To have regular and ongoing contact (by phone, through letters and in person) as soon as possible after entering custody with biological parents, relatives and other important people in your life, unless it is contrary to your safety and/or wellbeing and prohibited by a court order or you choose not to. | <ol style="list-style-type: none"> 22 To be informed by a CYFD representative when contact with important people in your life is being monitored or prohibited, and the reasons it is being monitored or prohibited. 23 To remain in the same school you were enrolled in before entering into custody and to remain in the same school throughout your stay in custody; to be provided with transportation arrangements to ensure continued enrollment in the same school. 24 To attend and participate in school meetings, including parent /teacher conferences, Individual Education Planning (IEP) meetings and Next Step Planning meetings. 25 To participate in extra-curricular, cultural, spiritual and personal enrichment activities. 26 To be involved in the development of your treatment plan, life skills plan, transition plan and visitation plan; to receive factual information about the treatment decisions made by the agency that affect your life. 27 To have a plan for your future, including a life skills plan and transition plan; to be offered services to help you prepare to become a successful adult. 28 To an annual credit check from age 14 to 18. 29 To initiate a review of any prudent parenting decision made by your foster parents, at 14 and older. |
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If you feel your rights have been violated, please email CYFD.YouthGrievance@state.nm.us or call or text 505-228-6797.

