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Foster Youth File Lawsuit to Address Harm Inflicted by New Mexico's Broken Foster Care System

Plaintiffs seek creation of a child welfare system that ensures access to critical services and expertise capable of accommodating children coping with complex trauma.

SANTA FE, N.M.—Today 13 children who are in the foster care system filed *Kevin S. v. Jacobson* in federal district court in New Mexico. They are joined by protection and advocacy organizations Disability Rights New Mexico and Native American Disability Law Center. The plaintiffs are asking the State of New Mexico to fulfill its legal obligation to provide the state's 4,700 foster children with the essential care and stability that they need to grow and thrive.

Despite receiving an increase in funding and having a budget of over \$33 million for fiscal year 2019, New Mexico's system of child welfare remains among the worst in the nation and is in violation of several federal laws including the Rehabilitation Act, the Americans with Disabilities Act, the Fourteenth Amendment's Due Process Clause and the Medicaid Act. New Mexico's child welfare program has failed multiple federal audits and has many documented deficiencies, including:

- 1) The failure to recruit, license and train people needed to ensure safe, supportive homes for foster youth, resulting in children being repeatedly uprooted and cycled in and out of short-term emergency placements, (which sometimes includes government offices);
- 2) The failure to provide foster children with access to the essential medical, mental and behavioral health services necessary to address their needs as children who have been impacted by trauma.

"The New Mexico Children, Youth, and Families Department and the Human Services Department, which are obligated to provide services and supports children in foster care, know that the child welfare system is inflicting harm on the children in its care. They also know how to fix it," said **Nancy Koenigsberg, Senior Attorney with Disability Rights New Mexico**, "We want CYFD and HSD to work together to ensure that New Mexico has a trauma informed child welfare system capable of meeting the needs of children with complex trauma."

New Mexico has the tools and expertise needed to immediately improve the way it serves children impacted by trauma who are in state custody. The complaint in *Kevin S. v. Jacobson* lays out exactly the steps the state should take to make sure that children in foster care are adequately supported, including:

- 1) Screening for trauma and swift provision of appropriate, adequate, and coordinated behavioral and mental health services;
- 2) Consistent monitoring of children’s health, behavioral health and treatment;
- 3) A holistic wraparound model that 1) facilitates collaboration between, and support for, those responsible for providing care and services, 2) ensures an individualized planning process for each child and (3) focuses on sustaining relationships;
- 4) A commitment of resources for additional case workers, mental health professionals, and foster parents with appropriate expertise and training to ensure stable and supportive placements.

Every child entering the foster care system in New Mexico is highly likely to have experienced multiple forms of trauma prior to being entrusted into the state’s care. Medical and social science have firmly established that exposure to complex trauma deeply impacts brain activity, function and development, particularly in the developing brain of a child or young person. When unaddressed, the neurobiological effects of trauma often result in predictable changes to numerous essential functions and life activities including behavior, emotional self-regulation, concentration, sleep and cognition.

“Under the law, New Mexico is obligated to protect the wellbeing of its children.” said **Kathryn Eidmann, lead counsel and senior supervising staff attorney** with Public Counsel’s Opportunity Under Law Project, a specialized unit that files impact litigation to redress root causes of economic inequities. “For years, New Mexico has simply pushed its most vulnerable children through a broken foster care system as if they don’t matter. Today, 13 of those children took a stand to say enough to a system that fails to keep them safe and inflicts further harm by locking them in a recurring cycle of trauma that impacts their lifelong health and wellbeing.”

The complaint filed today with the federal court includes statements from foster youth themselves testifying to lack of access to supportive placements and critical services that cause foster youth to suffer additional trauma.

“As a foster youth in CYFD’s custody, I only ever felt evaluated based on a collection of my worst moments,” said **Reed Ridens, a former foster youth**. “I wish just once I’d been asked what I wanted and needed, and not told. No child should have to live like that.”

The combination of both a lack of stable housing and critical mental health services prevents development of stable bonds with adults that children know care about them; delivery of consistent care; as well as regular school attendance, which impacts long-term educational attainment and success.

Plaintiffs are represented by attorneys from **Public Counsel; Munger Tolles & Olson; Youth and Education Law Project; Disability Rights New Mexico; Martinez, Hart, Thompson & Sanchez, P.C.; Freedman Boyd Hollander Goldberg Urias & Ward, PA; The Crecca Law Firm; and The Law Office of Ryan J. Villa.**

To view the complaint in full, [please click HERE](#).

To view Plaintiff profiles, [please click HERE](#).

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About Disability Rights New Mexico

Disability Rights New Mexico (DRNM) is an independent, private nonprofit agency whose mission is to protect, promote and expand the legal and civil rights of persons with disabilities. DRNM’s mission reflects a belief that persons with disabilities are entitled to be treated with dignity and respect, free from abuse, neglect, exploitation

and discrimination; and a belief that they are entitled to equal rights and to equally effective access to the same opportunities as are afforded other members of society. This mission is intended to promote the independence, productivity, and full community inclusion of persons with disabilities; to promote consumer choice and consumer control of individual services; and to promote self-help through knowledge and self-advocacy skills. Toward the fulfillment of its mission, DRNM provides several basic services: information and referral about services for persons with disabilities and about their legal rights; individual case advocacy services to resolve specific disability rights problems; advocacy efforts to improve service systems and to generally promote, protect and expand the rights of persons with disabilities; and training activities to increase awareness of disability rights and increase consumer empowerment. For more information visit www.drn.org.

About Native American Disability Law Center

The Law Center's mission is to advocate so the rights of Native Americans with disabilities in the Four Corners area are enforced, strengthened and brought in harmony with their communities. Our advocates work to ensure that Native Americans with disabilities have access to justice and are empowered and equal members of their communities and nations. The issues we address include civil rights, special education, health care and rights to public and private services. Our staff investigates abuse and neglect in care facilities and provides rights-based training for people with disabilities, their families, educators and service providers. For more information visit www.nativedisabilitylaw.org.

Public Counsel is the nation's largest pro bono law firm. Founded in 1970, Public Counsel strives to achieve three main goals: protect the legal rights of disadvantaged children; represent immigrants who have been the victims of torture, persecution, domestic violence, trafficking, and other crimes; and foster economic justice by providing individuals and institutions in underserved communities with access to quality legal representation. Through a pro bono model that leverages the talents and dedication of thousands of attorney and law student volunteers, along with an in-house staff of more than 75 attorneys and social workers, Public Counsel annually assists more than 30,000 families, children, immigrants, veterans, and nonprofit organizations and addresses systemic poverty and civil rights issues through impact litigation and policy advocacy. For more information, visit <http://www.publiccounsel.org/>.

Youth and Education Law Project (YELP) is an in-house legal and teaching clinic at Stanford Law School that advocates for equality of educational opportunity for disadvantaged children and their communities -- through class-action litigation, to providing research and consulting assistance to charter school agencies and school districts, to direct legal services on behalf of public school-age youth. Established in 2001, YELP is among the first of a dozen clinics within the Mills Legal Clinic, and continues to serve low-income families in the Peninsula and greater Bay Area, as well as vulnerable children across the country through its impact advocacy.

Munger, Tolles & Olson LLP

For more than 55 years, Munger, Tolles & Olson has been a full-service law firm known for trying bet-the-company cases and negotiating deals that shape the corporate landscape. The firm's nearly 200 lawyers represent clients in a broad range of complex and high-profile matters in the areas of corporate, litigation, real estate and financial restructuring. Contributing to the community through pro bono work is a core tenet of the firm's culture. Its attorneys have had an impact on many social issues through pro bono advocacy, including veterans rights, civil liberties, affordable housing, immigration and LGBT rights, among others. Munger, Tolles & Olson has been consistently ranked on The American Lawyer's A-List since its inception in 2004, including five years in the top spot, in part due to its commitment to pro bono service. For more information, please visit www.mto.com.

Martinez, Hart, Thompson & Sanchez, P.C.

For over two decades the attorneys at Martinez, Hart, Thompson & Sanchez, P.C., have championed for those who have fallen victim to reckless conduct, criminal acts, neglect and negligent acts of others. Through a combination of hard work, skill, integrity and tenacity we have helped restore independence and dignity to our clients' lives.

Freedman Boyd Hollander Goldberg Urias & Ward, PA is a New Mexico based law firm specializing in class actions, reform litigation, and civil rights.

The Crecca Law Firm is a New Mexico law firm founded in 2004 and specializing in litigation and advocacy on behalf of injured clients. Sara Crecca is of counsel at the Crecca law firm and has spent her entire legal career advocating for abused, neglected and injured children.

The Law Office of Ryan J. Villa is a New Mexico based firm founded in 2014 that focuses on criminal defense and plaintiffs' representation in civil rights and personal injury cases, including class-action systems reform litigation.