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May 30, 2026

National Association of Counsel for Children (NACC)
Promoting Excellence Awards Committee
899 North Logan Street, Suite 208
Denver, CO 80203

Subject: Letter of Nomination for Tara Ford

Dear Members of the Selection Committee,

I am honored to nominate Tara Ford, Senior Counsel at Public Counsel, for NACC's 2026 Promoting Excellence Award in the Outstanding Legal Advocate category. Her personal experience as a young single parent reliant on social safety net services led her to law school, and since 1993 she has worked to improve the lives of children and families, especially those entangled in dependency proceedings. In 2006, Tara's dedication to excellence in lawyering for children led her to become certified by NACC as a Child Welfare Law Specialist. I have had the privilege of working closely with Tara for nearly a decade on groundbreaking advocacy and litigation on behalf of children, youth, and families, and have witnessed firsthand her exceptional legal skill, deep compassion, and unwavering commitment to the clients and communities she serves.

Tara is one of the field's leading advocates for children and youth, with a longstanding focus on protecting the rights of children and families involved in the child welfare system and securing landmark reforms. Her work spans foster care, education, health care, disability rights, and the rights of Native children, families, and Tribes, reflecting her deep commitment to ensuring that children and families receive the care, services, and protections to which they are entitled. She combines outstanding legal advocacy with a client-centered, equity-driven approach, holding government systems accountable while working tirelessly to ensure that legal victories lead to meaningful change. Equally important, Tara works in close partnership with community-based organizations, social service providers, and tribal councils, while ensuring that the voices and agency of her clients remain centered in her advocacy.

Tara's recent work reflects both the breadth of her expertise and the depth of her commitment. In [*Kevin S. v. Blalock*](#) (No. 1:18-cv-00896), a groundbreaking foster care reform case in New Mexico, Tara has continued to drive accountability following a 2020 settlement and a 2023 corrective agreement. In 2025, she led the effort to secure remedial orders directing the State to address excessive caseloads, foster home shortages, delayed well-child checks, and other failures causing irreparable harm to children. She then led negotiations culminating in a third remedial order in March 2026, establishing clear benchmarks and timelines to advance a more trauma-informed, community-based system of care for children and families.

In [*Ocean S. v. L.A. County*](#) (No. 2:23-cv-06921), Tara has helped lead a class action challenging L.A. County's and the State of California's failure to provide transition-age youth in foster care with the housing, mental health services, and supportive placements to which they are legally entitled. In 2024, Tara helped secure a significant district court ruling allowing the case to move forward, holding that transition-age foster youth have a constitutional right to shelter, including emergency housing options. This month, the U.S. Court of Appeals for the Ninth Circuit rejected L.A. County's attempt to dismiss the case, clearing the way for the lawsuit to proceed on the merits so that seven young people in foster care can continue seeking systemic reforms. This recent victory ensures that some of the most vulnerable young people in L.A. County's foster care system will have the opportunity to pursue accountability and meaningful relief in federal court.

Tara's legal advocacy for children and families focuses on front-end efforts to keep families together. She has long advocated to protect children's rights to stay connected to their Tribes and communities. In 2022, she represented the NACC and 30 other children's rights organizations in an [*amicus brief*](#) filed in the U.S. Supreme Court in support of Federal and Tribal defendants in *Haaland v. Brackeen* (Nos. 21-376, 21-377, 21-380). The amicus brief explained that the Indian Child Welfare Act was enacted to protect the best interests of Native children, and that this is exactly what it does.

Tara also understands that the systems that seem designed to help often worsen the harms experienced by children and families, especially those who are under-resourced and without adequate representation. For example, too often government agencies induce or direct parents to seek guardianships under threat of action by the child dependency system, a practice understood as an aspect of the shadow foster care system. Tara has provided representation in California state courts seeking appointment of counsel to protect the constitutional rights of indigent parents in guardianship proceedings that threaten fundamental parental rights.

Tara has provided representation to children and their families to address the many systemic barriers they face, providing representation to eliminate structural injustice and discrimination in areas like education. Since joining Public Counsel, she has worked closely with clients and communities to bring novel claims to address intersectional issues impacting children.

In [*Kerri K. v. State of California*](#) (No. MSC19-00972), Tara secured landmark settlements addressing the unlawful use of restraint and seclusion at Floyd I. Marchus School, a public school operated by Contra Costa County. The case sought to protect students with disabilities from harmful practices like physical restraint and seclusion and to ensure they receive the education and supports to which they are entitled in the least restrictive appropriate environment. Since then, Tara has remained deeply involved in implementation, working with families, advocates, and outside monitors to ensure school staff receive meaningful training, oversight, and accountability. That work has produced measurable progress: in July 2025, the school reported a drastic reduction in physical restraint and seclusion over the prior year and achieved its first quarterly report with no such interventions.

In [*Stephen C. v. Bureau of Indian Education*](#) (Nos. 3:17-cv-08004, 21-15097), Tara helped advance a historic legal battle on behalf of Havasupai students and the Native American Disability Law Center challenging the Bureau of Indian Education's (BIE) failure to provide Native students at Havasupai Elementary School with the education to which they are entitled. On appeal, in a first-of-its-kind decision, the Ninth Circuit recognized and enforced Native students' federal rights to education in BIE schools. Following that landmark victory, the parties reached a first-of-its-kind settlement in 2023 requiring the BIE to improve educational services and collaborate with the Tribe. Tara now helps lead implementation efforts, working with co-counsel to advance meaningful changes at the school. The latest 2026 work plan includes foundational improvements such as standardized lessons, a library committee, student activities, stronger family engagement, and development of a framework for embedding tribal cultural content across subjects.

Tara's advocacy has also extended to nationally significant matters affecting children and families. In November 2025, Public Counsel authored an [amicus brief](#) in the U.S. Supreme Court in *Little v. Hecox* and *West Virginia v. B.P.J.*, joined by 16 partner organizations, with Tara serving as counsel of record. Filed on behalf of advocates for girls' and women's rights, the brief argued that Title IX protects all girls, women, and LGBTQIA+ athletes and that these bans undermine equal educational and athletic opportunity while disproportionately harming students who do not conform to traditional expectations of femininity, with particularly harmful consequences for Black and brown girls and women.

In addition to her litigation achievements, Tara brings decades of leadership and service to the field. She was the co-founder of [Pegasus Legal Services for Children](#), a nonprofit law firm serving children and families in New Mexico that was honored as the Outstanding Legal Organization of the Year in 2015 by the State Bar of New Mexico. In 2016, [she authored](#) *Pegasus Legal Services for Children: Taking Stock of a Rebellious Non-Profit Practice in New Mexico*, published by the *Clinical Law Review*. Her work has been recognized by the Daily Journal, New Mexico Voices for Children, the State Bar of New Mexico, and Parents for Behaviorally Different Children.

We are deeply grateful for Tara's unwavering dedication to the well-being of children and families. Her efforts to support young people of color and other historically underserved communities have helped advance equity and justice and have improved the lives of children and families across multiple systems. Just as important, Tara is known by her colleagues, co-counsel, and clients as a brilliant, humble, warm, and deeply compassionate advocate who brings both rigor and humanity to this work.

It is with the utmost confidence that I recommend Tara Ford for NACC's 2026 Promoting Excellence Award in the Outstanding Legal Advocate category. Her achievements, expertise, client-centered approach, and persistence in turning legal victories into real and lasting change make her exceptionally deserving of this recognition. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Kathryn Eidmann". The signature is fluid and cursive, with the first name "Kathryn" and last name "Eidmann" clearly distinguishable.

Kathryn Eidmann
President & Chief Executive Officer
Helen & Morgan Chu Chief Executive Officer Distinguished Chair

The Supreme Court
State of Washington

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May 28, 2026

Re: Tara Ford, Nominee for NACC Outstanding Legal Advocate Award

Dear Selection Committee:

I am pleased to support the nomination of Tara Ford for the National Association of Counsel for Children's Promoting Excellence Award. Tara embodies all this award seeks to recognize. She is a dedicated lawyer for children. She is an innovator in the field. She is a mentor. She is a staunch ally for everyone and demands that those around her interrogate their assumptions and learn to be better. She is someone I look up to as a leader, someone I learn from as an advocate, and someone I am proud to have learned beside for over 30 years.

When I first met Tara, we were both undergraduate students. Tara had a baby she was raising alone. When I say Tara was alone, I mean it. She had no support system, for reasons entirely out of her control. She worked as a preschool teacher in a therapeutic preschool, raised her daughter, and easily ran circles around every other student in the classes we took together. Her intellect drove her to ask impossibly hard questions and her persistence drove her to keep pursuing answers, long after the topic had shifted. Somehow, she navigated her education, her life as a parent, and her development as a professional. With nothing but what fit in a VW bug, Tara and her daughter set off for Stanford Law School, where she immediately railed at the injustices she saw around her. The wealth inequities among the students stood out to her. When we were both in college and in law school, we traded recipes that would stretch our financial aid budgets out, and we went to school with people who had never held a job until the first summer after 1L year. We were proverbial fish out of water. But Tara never lost sight of her goal: to represent children who had no way to access the legal system.

In the 1990s, child advocacy as a profession barely existed and was effectively non-existent in New Mexico. When Tara and I reconnected after law school, when we had both returned to New Mexico, Tara had a plan to open a non-profit legal center, Pegasus Legal Services for Children. Tara continued to raise her daughter, and she took the professional risk of opening an advocacy center dedicated to the representation of children. She was told it would not be financially viable, that representing children was noble, but her skills could make her a great deal more money in the private sector, that running an organization like that would require her to diversify her practice to bring in private clients to support the representation of children. Tara was undeterred. Tara and her practice partner willed Pegasus into being. It is now a standalone organization providing representation to children free of charge in multiple areas, engages in systemic advocacy, and empowers young people to know and understand their rights. Tara changed the way children get access to justice in New Mexico.

She has also changed the way Native American children access education, the way New Mexico handles child welfare cases where the Indian Child Welfare Act applies, and the way children with special needs litigate access to education. In each of these areas, Tara has been a pioneer. She created a career path litigating the rights of children who have no voice in our legal systems. In her career, she has been

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able to do exactly what she set out to do when she went to law school. But she has done much more than that. She has been at the forefront of supporting the development of a body of law in education law. She has been a part of developing impact litigation in the area of children's rights. She has been a voice for indigenous children in some of the most underrepresented and poorest reservations in the United States. Her work has had tangible effects on the lives of countless children and their communities by ensuring they have access to quality and timely education and special education services.

Throughout her career, Tara has been rigorously engaged in the project of unlearning the racism we are all taught as children in this society. In every space I have seen Tara, as a lawyer, as a professor, as a mentor, as a parent, and as a friend, Tara has been a leader in addressing racism, learning to be anti-racist, and demanding systemic change. She is constantly evolving. In each conversation I have with her, I learn about how to be a compassionate leader, how to be a courageous advocate, and how to demand the best from her staff and her students while adhering to the strictest legal ethics. Her expectation that others hold themselves to the same standard to which she holds herself and those around her can cause some to rise to the occasion. Yet others respond defensively, perhaps not yet used to understanding the importance of challenging inequity interpersonally when attempting to challenge it systemically through litigation. Regardless of the response to her high expectations, Tara perseveres as a leader, with humility and an open heart. She is always willing to learn, but she is uncompromising on her values. Advancing equity and pursuing justice are not negotiable for Tara. They are the air she breathes.

I am honored to support Tara for this award. Tara resists individual recognition, instead always deferring to the wisdom of the clients she has spent her career representing. She says she is one voice of many and being recognized as an individual feels like recognizing the wrong voice. Even when being recognized for her professional accomplishments, Tara defers to the voices of her clients. Her commitment to justice is who Tara is. I cannot think of any advocate more deserving of this award.

Sincerely,

Raquel Montoya-Lewis

/electronically signed/

Justice Raquel Montoya-Lewis



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💻 PegasusLaw.org
📍 505 Marquette Ave NW
Suite 1350
Albuquerque, NM 87102

National Association of Counsel for Children
Promoting Excellent Award Committee

May 27, 2026

It is with great pleasure to support the nomination of Tara Ford to receive this prestigious award from NACC. For the past thirty years, Tara has been an advocate for children's rights, through policy advocacy, individual representation, and mentoring young attorneys to continue this important work.

Decades ago, she was a major member of a task force that wrote (and later had passed) the Children's Code. The purpose of the act says it all. "...legislative purpose: first to provide for the care, protection, and wholesome mental and physical development of children...and then to preserve the unity of the family whenever possible. A child's health and safety shall be the paramount concern."

In everything Tara has done, her work embodies this intent. Children first. Over twenty years ago, she co-founded Pegasus Legal Services for Children with a mission: "promote and defend the rights of children and youth to safe, stable homes, quality education and healthcare, and a voice in decisions that affect their lives." Pegasus has since become a respected expert on children's issues.

For several years, she was a professor at Standard Law School, and it seems everywhere she went, she had several young law students in tow, sharing her knowledge and enthusiasm for children's law.

Over the years she has been involved in numerous litigation, both individual and impact litigation. Recently, she was part of the team that filed a class action lawsuit in New Mexico, known as Kevin S., on behalf of all children in foster care.

**TO PROMOTE AND DEFEND THE RIGHTS OF CHILDREN AND YOUTH
TO SAFE, STABLE HOMES, QUALITY EDUCATION AND HEALTHCARE,
AND A VOICE IN DECISIONS THAT AFFECT THEIR LIVES.**



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Six years later the team is still working together, enforcing the agreement made and, most recently, going to arbitration. Tara has headed up these efforts, continuing her gift of demanding that these children deserve better.

Thirty years later, there are many children's lawyers, who are better lawyers for having the privilege to work with Tara.

She is a fierce advocate, not afraid to challenge any system necessary and is a great gist to all of us working to protect children's rights.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bette Fleishman".

Bette Fleishman
Executive Director
Pegasus Legal Services for Children

**TO PROMOTE AND DEFEND THE RIGHTS OF CHILDREN AND YOUTH
TO SAFE, STABLE HOMES, QUALITY EDUCATION AND HEALTHCARE,
AND A VOICE IN DECISIONS THAT AFFECT THEIR LIVES.**



TULALIP OFFICE OF CIVIL LEGAL AID

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May 28, 2026

Dear NACC Promoting Excellence Awards Committee:

It is my distinct honor to support Tara Ford's nomination for the NACC Outstanding Legal Advocate Award. Tara embodies the spirit of this award as she is truly the most generative, hopeful, and tenacious advocate for young people I have had the privilege of knowing and working with.

I am especially lucky in supporting her nomination because I have known Tara in many capacities. I knew her first as a mentor, then later as co-counsel and a colleague in child welfare advocacy and education civil rights litigation, and now as a beloved friend. Throughout each of those chapters, Tara has shown me, personally and professionally, what it means to not only provide the highest quality legal representation to children and their families, but also to show up for our friends, families, and in our communities as people who care deeply about others and standing up for what is right. When I first started working with Tara at the Native American Disability Law Center in 2014, I used to tell her: "I want to be you when I grow up." I still feel that way all of these years later. Her steady mentorship, absolute brilliance, and willingness to always find time to talk with me about the work has built the foundation for my own legal practice. As a mentor to law students and young attorneys, I strive to embody Tara's trademark patience, kindness, and generosity of spirit.

As a prolific impact litigator, Tara's deep commitment to improving the lives of children and students with disabilities speaks for itself. I will share one example that has resulted in real and lasting change for tribal students with disabilities. As part of a coalition of legal services organizations and private law firms committed to delivering pro bono legal services, Tara and I were privileged to litigate the landmark *Stephen C. vs. Bureau of Indian Education* case from 2017 to 2022. This [historic litigation](#) sought to hold the federal government accountable for providing quality education to tribal students attending a federally run BIE school at the bottom of the Grand Canyon. From the initial client work representing individual Havasupai students with disabilities in special education administrative proceedings to federal court litigation – including a successful appeal to the Ninth Circuit – to post-settlement agreement implementation, Tara was the heart and soul of that case. For years, I observed firsthand Tara's deep dedication to our clients, her humility in representing children and students from diverse backgrounds, and her unwavering commitment to advancing principles of equity and justice through advocacy. Tara's striking legal brilliance and keen litigation strategy resulted in an incredible outcome in *Stephen C.* that has undoubtedly changed the lives of not only individual Havasupai students, their families, and the



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Havasupai community, but has had a ripple effect across Indian Country. Her legal contributions in advancing the education civil rights of tribal students (especially those with disabilities and whose learning has been impacted by trauma) are unmatched.

Moreover, for the past three decades, Tara has set the absolute gold standard for competent, thoughtful, ethical lawyering for countless attorneys, advocates, and law students. Her legal [scholarship](#) about reflecting, connecting and acting with courage towards a more just world should be required reading in every legal classroom in the country. When Tara speaks, you listen – not because she is the loudest voice in the room, but because she has earned your respect. Beyond her significant contributions to shaping state and federal law, her vision, leadership, and generosity of spirit has made profound difference on countless lives across the country. From fighting tirelessly to improve the child welfare systems in California and New Mexico, to protecting and promoting the voting and education civil rights of several tribal communities, to safeguarding the unique rights of students with disabilities, we all have benefited from Tara's zealous advocacy and deep commitment to the work.

Finally, as my dear friend, Tara is simply one of my favorite people on the planet. How fortunate I am to have learned from her over the last decade, her words of wisdom and encouragement ringing through my ears today. As an education civil rights lawyer serving tribal communities, the work can be hard. It has been an especially challenging two years as public education and education civil rights are under attack; my clients are members of some of the most marginalized, impacted communities. But I know that I can – and will – continue standing up for what is right, challenging systemic failures, and holding governments accountable to tribal children and their families because of her.

I hope you will see how unbelievably deserving of this award Tara is for she truly embodies the highest caliber of what a legal professional is. As someone who has been fortunate to have been connected to Tara for the past 12 ½ years, it is with great enthusiasm that I support her nomination for the NACC Outstanding Legal Advocate Award. If the awards committee has any additional questions, I would welcome an opportunity to answer them.

Sincerely,

Alexis M. DeLaCruz, Esq.

Education Attorney
Tulalip, WA

May 27, 2026

National Association of Counsel for Children (NACC)
899 N. Logan St., Suite 208
Denver, Colorado 80203

Re: 2026 Promoting Excellence Award
Outstanding Legal Advocate

Honorable Review Panel:

I am writing to offer my enthusiastic support for Tara Ford's nomination for the National Association of Counsel for Children's (NACC) 2026 Promoting Excellence Awards in the Outstanding Legal Advocate category. Tara's extraordinary advocacy for children, youth, families, and communities is truly deserving of national recognition. Her unwavering leadership has fueled enduring reforms across child welfare, education, and disability rights, making a profound difference in countless lives.

Tara has been a steadfast protector of the rights of Native American children, families, and communities, working diligently to uphold the Indian Child Welfare Act of 1978. Through critical litigation, she has defended and affirmed the educational rights of American Indian students attending federal Bureau of Indian Education schools. Here in New Mexico, Tara's advocacy has been instrumental in safeguarding the rights of foster care children and holding the state accountable for its treatment of all children in the welfare system—especially Native American children, whose voices are too often marginalized or omitted.

Her work alongside Native American Tribes stands out as exemplary, overcoming immense challenges to ensure that Native perspectives are not only included but truly understood. Tara's commitment is further evidenced by her co-founding of Pegasus Legal Services for Children, a trailblazing organization dedicated to protecting both Native American and non-Native children and families in New Mexico. Pegasus continues to embody Tara's vision and tenacity, advancing zealous representation for those who are underrepresented and most in need.

Beyond litigation, Tara's support for Native American Peacemaking Circles, which strives to "keep the child at the heart of the circle," demonstrates her holistic approach to advocacy and the protection of tribal sovereignty. Her deep legal knowledge, coupled with her passionate, culturally humble advocacy, has had a meaningful impact not only here in New Mexico but across the nation. Tara's dedication to advancing equity and justice has fostered real and lasting change in our child welfare system, ensuring the well-being and legal rights of children and families are fiercely protected.

Professionally, Tara exemplifies excellence in advocacy, ethical leadership, and a relentless drive for justice that has led to significant legal victories and much-needed

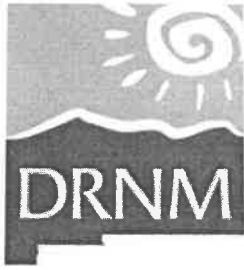
reforms for our communities. When I think of Tara Ford, I am reminded of the wisdom of a Native American judge: “These children are your young parents, and how we treat them will be how we are treated when we return to our childhood as elders.”

For all these reasons, it is a true honor to support Tara Ford’s nomination for this most prestigious award. Her contributions continue to inspire and set a standard for outstanding legal advocacy nationwide.

Respectfully submitted,

/s/ Cheryl Demmert Fairbanks, Esq.

Cheryl Demmert Fairbanks, Esq.,
Justice for Tlingit and Haida Central Council Supreme Court
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Gary Housepian, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

May 28, 2026

National Association of Counsel for Children (NACC)

Promoting Excellence Awards Committee

899 N. Logan St., Suite 208

Denver, CO 80203

Re: Letter of Support for Tara Ford for Outstanding Legal Advocate Award

Dear Members of the Selection Committee,

I am honored to have this opportunity to write this letter of Support for Tara Ford for the Outstanding Legal Advocate Award.

I have known and worked with Ms. Ford since 2018 when I came to New Mexico to become CEO of Disability Rights New Mexico. We began working together as a team beginning at that time in preparation of filing the class-action suit, *Kevin S. v. Blalock & Scrase*, in 2018. From the outset, Ms. Ford was our leader in this work for children and youth. She demonstrated extraordinary leadership and knowledge throughout negotiations that lead to a landmark settlement in 2020. Her humility, experience, wisdom and judgment were essential to achieving the settlement. But, just as important and greatly appreciated, Ms. Ford listened to a large team of other advocates and processed the diverse input, even when it might be contrary to her views. This essential quality of leadership has continued as the Kevin S. Implementation Team continues to strive for the necessary reform for foster care youth during the past six years.

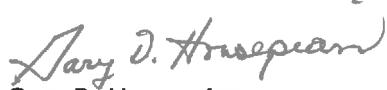
Ms. Ford has also modeled strong skills of relationship building with expert consultants in the Kevin S. case. Additionally, she has been our leading organizer and spokesperson when presentations were needed to be made to the New Mexico Legislature. Throughout my experience with Ms. Ford, there have been many qualities that she has displayed and helped me learn how to be a better advocate in our work. Along with working tirelessly through the day and night to meet deadlines and organize our advocacy, Ms. Ford never complained or sacrificed the quality of our advocacy. She has been our compass and has always made sure we were grounded in what was most important-the youth. Ms. Ford has never wavered from our commitment to client centered advocacy. Often, she has pursued opportunities for the lived experiences of the youth to be voiced by them. The progress achieved in Kevin S. has not met our standards and has caused discouragement but Ms. Ford continues to model persistence and passion for doing justice for the youth. Finally, the progress that has been made would not

have occurred without Ms. Ford's relentless determination and recognition of the "fierce urgency of now" for these youth.

I first started public interest work 49 years ago as a lawyer and have had many experiences in different roles to work with some exceptional advocates to achieve systemic reform. Ms. Ford stands out among them for her dedication to client-centered practice and advancing equity and justice.

Thank you for your consideration of Ms. Ford's nomination and my letter of support.

Sincerely yours,

A handwritten signature in cursive script that reads "Gary D. Housepian".

Gary D. Housepian
CEO

Youth and Education Law Project Helps to Steer a Landmark Settlement in *Kevin S. et al. v. Blalock, et al.* — A Victory for Foster Children Impacted by Complex Trauma

April 3, 2020

By

Tara Ford (https://law.stanford.edu/?post_type=person&p=197553)

Joanne Newman (<https://law.stanford.edu/directory/joanne-newman/>)

Albuquerque, NM – On March 26, 2020, a landmark and innovative settlement was reached between foster children, disability rights advocates and the State of New Mexico which comprehensively and collaboratively creates a system of child welfare built around the principle of trauma-responsiveness. To meet this aim, the settlement calls for integrated child welfare and Medicaid systems, and expansion of the state’s commitment to Native American youth.

The settlement resolves a lawsuit that began in January 2018, when fourteen foster youth, joined by Disability Rights New Mexico and the Native American Disability Law Center, lodged a complaint (<https://law.stanford.edu/wp-content/uploads/2020/04/2018-09-22-DOC-001-Complaint.pdf>), against the State of New Mexico’s Children, Youth and Families Department (CYFD) and Human Services Department (HSD) – then under a previous administration. That case, filed in the U.S. District Court for the District of New Mexico, is now entitled *Kevin S. et al. v. Blalock, et al.*, No. 1:18-cv-00896. The lawsuit sought to compel the State of New Mexico to fulfill its legal obligations to provide the state’s foster children with the essential care and stability that they need to grow and thrive.

Children in or entering the foster care system are overwhelmingly likely to have experienced complex trauma. Medical and social science research has established that exposure to trauma has significant impacts on brain activity, function and development, particularly in the developing brain of a child or young person. Plaintiffs fought to ensure that the State of New Mexico would exercise special care not to retraumatize children in its custody and to affirmatively build a system designed to heal children’s past traumas. There are 23 Indian tribes in New Mexico: *Kevin S.* also sought to protect the rights of Native children under the Indian Child Welfare Act (ICWA).

The settlement was made possible by the work of a tireless team of New Mexico and national litigators. Tara Ford (<https://law.stanford.edu/directory/tara-ford/>), Clinical Supervising Attorney for the Youth and Education Law Project (<https://law.stanford.edu/youth-and-education-law-project/>) (YELP); Kathryn Eidmann of Public Counsel; and Grant Davis-Denny of Munger Tolles and Olsen were co-lead counsel. Over the past two years, YELP students Sarah Brim (’18), Sarah Dohan (’20), Vanessa Guerrero (’19), Emily Hayes (’19), Michael Moorin (’20), Jean Richmann (’18), Michael Ulmer (’19); and Cameron Vanderwall (’18) became critical members of the Plaintiff counsel team, participating in team meetings, talking with foster youth in New Mexico, researching cutting edge legal issues, and helping to formulate a settlement proposal.

The New Mexico’s Governor Michelle Lujan Grisham (<https://www.governor.state.nm.us/our-leadership/governor/>) has made improving the lives of children and youth a top priority of her administration – and her Cabinet Secretaries for CYFD, Brian Blalock (SLS ’2007 and YELP alum) and HSD, David Scrase, had goals and initiatives that were aligned to the goals of the lawsuit. Together the parties identified the needs for trauma-informed, behavioral health-focused reforms and for addressing the needs of Native youth, specifically. This collective and collaborative vision between advocates and agencies made this settlement agreement possible, and serves as a hopeful model for other states and advocates to do the same.

Dr. George Davis, a child psychiatrist who has spent nearly thirty years working with children in New Mexico stated:

The recently agreed upon effort to reorganize and professionalize the child welfare system is the first ever attempt in New Mexico to systematically apply the science of child development and the current understanding of the developmental effects of trauma to children under the state's care. The new agreement represents a voluntary partnership between the state and the plaintiffs that proposes to incorporate both current science and best practices.

Children are susceptible to trauma and loss in a way that can permanently change the course of their development. Throughout childhood, but especially in the first five years, critical brain development takes place that will potentially determine for a lifetime the child's ability to form attachments, learn skills and eventually become a productive member of society. The loss of a positive parenting relationship is the greatest of all potential traumas. Therefore, children for whom the state has become the guardian represent society's most vulnerable population

... The recently signed agreement will promote the agency's employment of systematic intervention procedures, reliable screening and referral to accessible treatments and programs. By its participation in this partnership, the state can benefit children not only during their present tragedy, but also for the entire course of their development.

The *Kevin S.* settlement is groundbreaking in its breadth and specific in its methods. It brings together advocates for children, state agencies and national experts to reach agreed upon targets that aim to turn around the complex systems that serve children in foster care. Among other targets, here are a few examples of activities agreed to:

Provision of a functional trauma assessment to children when they enter foster care to help identify what services and supports they will need to heal;
Cross-departmental training and coaching so that adults working with children in foster care will understand the impacts of trauma and how to help children;
Increased recruitment of more diverse foster parents;
Ending the practice of placing children in hotels, motels, offices or out-of-state residential placements absent extraordinary circumstances;
Expanding the state's provider capacity so that children can receive behavioral health services in their home communities;
Issuing new guidance governing medication protocols for children and youth in state custody;
Working with New Mexico's Tribes and Pueblos to draft a State ICWA that builds on the protections of federal law;
Providing direct assistance for Native foster youth to participate in traditional ceremonies, if they so choose; and
Proactively seeking federal funding for traditional treatments.

Change of this magnitude will take time. The parties have developed a common-sense approach to sequencing the tasks necessary to realign the system to meet the agreed upon targets. Data will be collected and evaluated by a team of experts with extensive knowledge in child welfare and Medicaid systems. These experts will produce public reports on settlement activities and progress towards the goals every year.

For more information about the *Kevin S.* settlement, please see coverage in *The New York Times* (<https://www.nytimes.com/2020/03/26/us/new-mexico-foster-care-lawsuit.html?searchResultPosition=1>) and the *Kevin S.* Settlement page (<https://kevinssettlement.com/the-settlement/>).

Category:

Litigation,
Mills Legal Clinic of Stanford Law School,
Youth and Education Law

Tags:

Child Welfare (https://law.stanford.edu/blog/?tax_and_terms=7573&page=1),
complex trauma (https://law.stanford.edu/blog/?tax_and_terms=7576&page=1),
Disability Rights New Mexico (https://law.stanford.edu/blog/?tax_and_terms=7577&page=1),
Foster youth (https://law.stanford.edu/blog/?tax_and_terms=7572&page=1),
Medicaid expansion (https://law.stanford.edu/blog/?tax_and_terms=7575&page=1),
Native American Disability Law Center (https://law.stanford.edu/blog/?tax_and_terms=7578&page=1),

Native American youth (https://law.stanford.edu/blog/?tax_and_terms=7574&page=1),
settlement agreement (https://law.stanford.edu/blog/?tax_and_terms=7580&page=1),
State of New Mexico (https://law.stanford.edu/blog/?tax_and_terms=7579&page=1),
RSS Feed (<https://law.stanford.edu/feed/>).

Trackback URL (<https://law.stanford.edu/2020/04/03/youth-and-education-law-project-helps-to-steer-a-landmark-settlement-in-kevin-s-et-al-v-blalock-et-al-a-victory-for-foster-children-impacted-by-complex-trauma/trackback/>).

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Next Article Alligators, Salmon, And Bees, Oh My! ELC Students Work To Protect Imperiled Species
(<https://law.stanford.edu/2020/04/15/alligators-salmon-and-bees-oh-my-elc-students-work-to-protect-imperiled-species/>).

From discord to agreement, progress reported at CYFD

Both sides in 6-year-old foster care case say state compliance with reforms should endure beyond Dec. 31



[Colleen Heild](#)

JOURNAL INVESTIGATIVE REPORTER

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Just 14 months ago, attorneys for a group of foster children contended the state Children, Youth and Families Department's compliance with agreed-upon reforms was so dismal, the agency should be placed into receivership.

Four years of "broken promises," they argued in December 2024, were putting abused and neglected children at great risk of harm.

Lawyers for CYFD and the state countered that it was much easier to "stand on the outside" and criticize those working every day to serve children in state custody.

"It is easy for critics and those with a financial interest in this case to describe CYFD as a building on fire," stated attorney Eric Loman back then.

Last week, the intense dispute of recent years seemed dissolved.

Both sides issued a first-ever joint news release announcing progress, such as the high percentage of children now receiving medical visits within 30 days after entering custody. There's also a new agreement on a way forward, including the creation of a foster parent advisory board that will report back by Dec. 31.

"I think everybody wants to have a more collaborative relationship ... realizing that we all have the same goals here," said Loman, an Albuquerque attorney representing the state in the settlement in 2020 of the so-called Kevin S. civil rights case, which sought to improve the well-being of the 2,000 or so children in state custody each month.

"We are at an important crossroads," Tara Ford, an attorney for the foster children plaintiffs, announced Monday. "The work is not finished and so we are really, really pleased that the state has come together to work with us to continue to move forward."

The progress comes after three CYFD Cabinet secretaries have come and gone since 2019, with Gov. Michelle Lujan Grisham putting a new leadership team in place in September.

That included former New Mexico Health Secretary Kathyleen Kunkel, a seasoned adviser who helped oversee the state's response to the COVID-19 pandemic, and Brenda Donald, who came to CYFD as chief operating officer after serving in leadership roles in the Maryland Human Services Department and as director of Washington, D.C.'s child welfare agency.

"We want to continue to work together to make meaningful and long lasting improvement to the child welfare system," Ford said, "changes that will sustain beyond the end of the current administration. As we've seen in recent years, changes in leadership can greatly impact the state's progress."

The latest agreement, hammered out by both sides, comes after more than a year of oversight by an arbitrator, Albuquerque attorney Charles Peifer.

In January 2025, Peifer rejected the receivership idea but instituted two remedial orders with short timelines to resolve issues, such as directing CYFD to seek adequate legislative funding for caseworkers and case aides.

Peifer, at a Monday meeting, congratulated both sides on the latest agreement.

"I think it is significant," he said. "I think it is significant in large part because it shows a return to the collaborative efforts to improve the system for all kids."

The agreement “also recognizes the significant progress that the state has made,” Peifer told the group, “particularly in the area of well-child checks.” Based on recent reporting, compliance is as high as 80%, he said. The state is required to conduct the checks within 30 days of taking a child into custody.

The progress in that area was “very much was based on very concentrated effort by senior officials at CYFD and HCA (the state Health Care Authority) that produced real, real results...,” Peifer said.

As of March 1, Lujan Grisham ended the yearslong controversial practice of housing children taken into state custody at CYFD offices because of a lack of foster homes.

CYFD and the HCA, also a defendant in the Kevin S. case, have committed to expanding the types of home-based services for foster children, building out foster care and adopting a model of enhanced foster care that provides additional training, supervision, support and care.

Recently, CYFD had 51 foster children in a group home shelter or setting; 47 in a treatment facility or hospital setting; and 16 foster children were living in small family-run community homes, said an agency spokesman.

In addition to responding to foster family concerns, the foster parent board will recommend strategies to improve resource family training, the licensing process and respite opportunities, among other issues.

As to caseloads, the latest agreement states that by July 1, at least 50% of all types of caseworkers will have caseloads that comply with set caseload standards.

New Mexico consistently ranks among the top six states for repeat maltreatment of abused or neglected children occurring within 12 months of the initial allegation, according to the state Legislative Finance Committee. In the first quarter of the 2026 fiscal year, the state’s reported rate of repeat maltreatment reached almost 16%, almost twice the national average.

The repeat maltreatment rates are often a reflection of the success of CYFD’s intervention and prevention efforts with families whose children have been deemed abused or neglected, the LFC has stated.

“These changes in the field are going to take some time and we want to say that employees at CYFD have been carrying a very heavy load, even as they strive to provide safety net services to children and families in the child welfare system,” Ford said.

Asked about what will happen to the reform efforts after Lujan Grisham leaves office Dec. 31, CYFD spokesman Jake Thompson told the Journal, “CYFD’s leadership team is working hard every day to make systemic and durable changes — recruiting, hiring and training more professional staff; reducing caseloads to give families more attention; improving the array of services and care for children in our care; recruiting more foster parents; and more — that will last well beyond this administration.”

Ford said the plaintiffs, which include Pegasus Legal Services for Children, Disability Rights New Mexico and the Native American Disability Law Center, will engage the new administration and provide information and expertise. The state is responsible for paying the plaintiffs’ attorneys’ fees and costs along with the defendants’ attorneys’ fees and costs.

“Plaintiffs are concerned that if new leadership is not prepared to assume its responsibilities promptly, the parties risk undermining any progress made,” Ford told the Journal on Friday. “On behalf of the children in State custody, we want and need the State to be successful.”

Six Years After Landmark Settlement, New Mexico Makes Limited Progress on Child Welfare Reforms

BY [NANCY MARIE SPEARS](#)

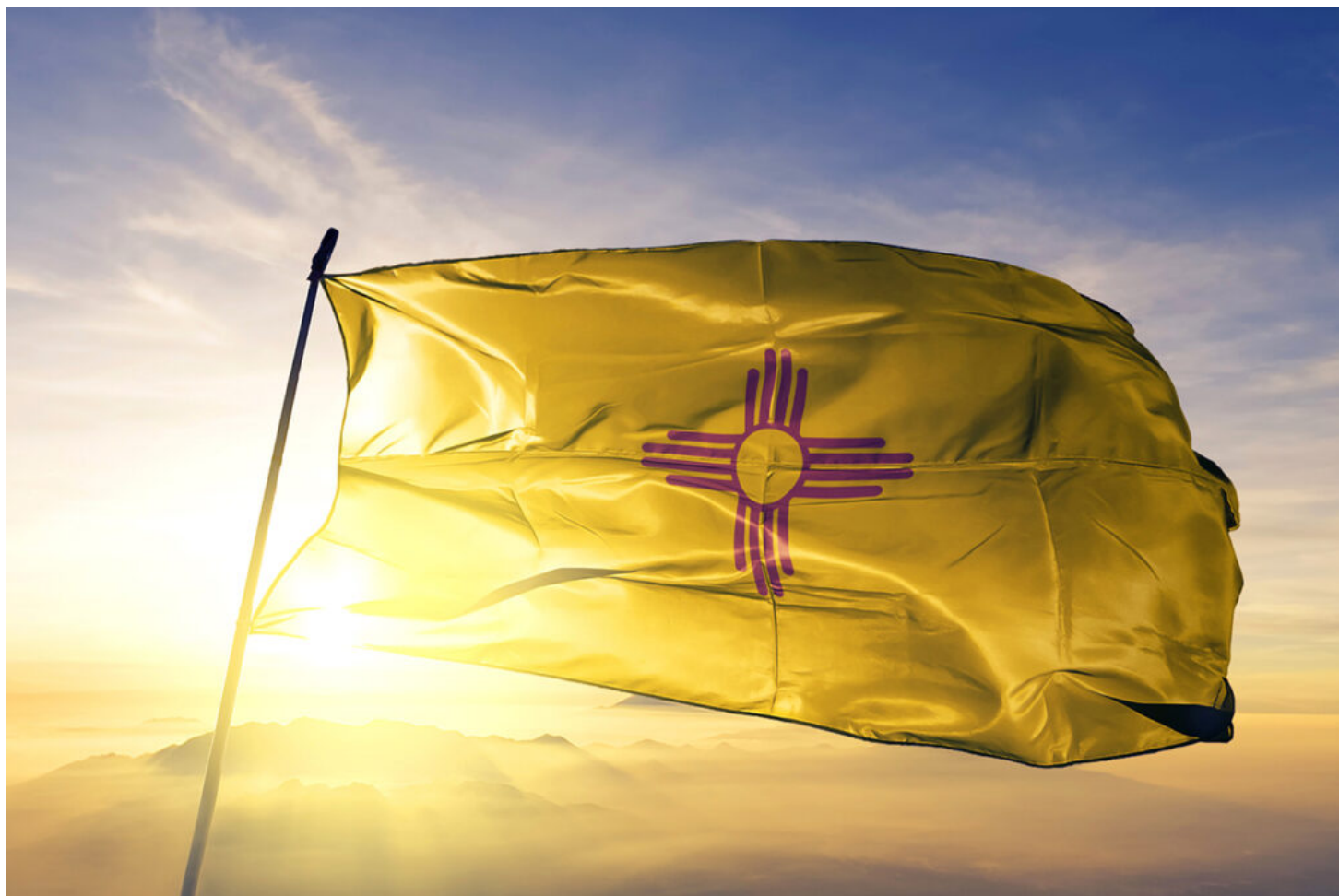


Photo by Aleks Taurus/Adobe Stock.

After being sued by disability rights advocates, the state of New Mexico is making slow but steady progress on a series of foster care reforms, according to lawyers representing 13 children in a 2020 class-action [settlement](#). They include placing foster children in the least-restrictive settings, expanding access to behavioral health services, creating a “trauma-responsive” system of care and following the federal Indian Child Welfare Act more closely.

The state was able to document that it has improved its record-keeping and increased access to medical care for foster youth. The state must also bar the practice of housing most children with developmental disabilities in residential treatment facilities.

“Frankly, being able to see what the problem is is key and central to being able to fix the problem,” said attorney Tara Ford, co-founder of Albuquerque-based Pegasus Legal Services for Children, which



Tara Ford

represented the plaintiffs. “It’s taken us a very long time to get there.”

The class-action suit, *Kevin S. v. Blalock & Scrase*, was filed by Disability Rights New Mexico, the Native American Disability Law Center, and 13 foster children in 2018. According to court filings, these youth cycled in and out of emergency placements like homeless shelters and government offices.

The case was settled in 2020, establishing specific goals that must be met in the state, which has more than 2,000 foster children, New Mexico [data shows](#).

At the time, child psychiatrist George Davis [praised](#) the settlement plan as “the first ever attempt in New Mexico to systematically apply the science of child development and the current understanding of the developmental effects of trauma to children under the state’s care.”

But by 2022, New Mexico was already falling short, according to an [independent review](#).

Since then, progress has been slow, but has improved, Ford said. One of the many requirements of the settlement is that the state must collect better data on foster care caseloads and barriers to foster youth receiving treatment or other health care services.

Ford said that achievement cannot be underestimated.

“Excavating what’s happening on the ground is one of the big benefits of *Kevin S.*,” she said. “We have incredible data about what is and isn’t happening for the first time since my 30 years practicing in New Mexico.”

Another area of improvement is the increased use of “well child visits,” a key requirement of the settlement. These visits allow foster children to be seen by a doctor and evaluated for services as quickly as possible.

“When a child comes into custody, it may be that not many people know much about that child’s well-being, so it’s really important to get the child to the doctor,” Ford said. “What we see with the well-child visits is that the state can make progress on these requirements under *Kevin S.* when it allocates the resources and focuses on getting the job done right.”

The department as well as other defendants in the *Kevin S.* settlement didn’t respond for comment before publication.

Therese Yanan is executive director of the Native American Disability Law Center, another plaintiff in the Kevin S. case. She has been an active member of the settlement's implementation team since the beginning and believes the latest set of reforms will not be the last.

Yanan also said progress is still falling short in three areas: addressing case loads and staffing issues, the lack of community-based services and the lack of home placements.

One defendant vowed to continue following the requirements of the settlement, which includes collaboration between Presbyterian Health Plan, the Children, Youth and Family Department and New Mexico's Health Care Authority.

In an email, a spokesperson for Presbyterian Health Plan remains committed to partnering with the state agencies "to improve timely access to health care services, facilitate coordination of care, and advance meaningful solutions that are improving outcomes for children in state custody."

As the settlement's arbitration process unfolds, "New Mexico has a very long way to go," Ford said. But, she added, "success is possible if the government decides to put its muscle behind coming into compliance with these requirements."

Despite the improvements in the treatment of foster children already in state custody, the child welfare system is now under fresh scrutiny for other failures. New Mexico Attorney General Raul Torrez announced [plans](#) to sue the Children, Youth and Families Department after results of a year-long investigation by the state's Department of Justice were [released last week](#). The report revealed significant child safety concerns and alleges that the agency took advantage of confidentiality laws to cover them up.

It also criticized New Mexico's emphasis on keeping families together.

"Instead of safeguarding vulnerable children, the Department has prioritized family reunification at virtually any cost," the Justice Department report states, "returning children to dangerous caregivers with histories of substantiated abuse or chronic neglect, and who refuse treatment or services to address those underlying issues."

Foster Youths' Housing and Mental Health Lawsuit Against LA County Moves Forward

BY [SARA TIANO](#)



Illustration by Christine Ongjoco.

A class-action lawsuit alleging Los Angeles County fails to provide safe and stable housing to transition-age foster youth with mental health disabilities will move forward, federal judges ruled this week.

[Ocean S. v. Los Angeles County](#), filed in 2023, alleges that the Department of Children and Family Services too often fails to provide “safe and stable” homes for older teens and young adults in foster care, pushing many into homelessness and sometimes leading to hospitalization or physical and sexual assault. Seven named plaintiffs further allege they were denied behavioral health care and basic support while in the county’s custody.

Defendants sought to have the case dismissed, but on Friday, a panel of judges in the U.S. Court of Appeals for the Ninth Circuit [rejected that attempt](#).

“Thousands of young people in L.A. County’s foster care system sleep in their cars, couchsurf with strangers, and struggle to access mental health care — not because the law allows it, but because County and State agencies have ignored their legal obligations for years,” a [press release](#) states. “Now, a federal

appeals court has ruled that seven of those young people have the right to hold those agencies accountable.”

A spokesperson for the Department of Children and Family Services said the agency “respects the ruling” and is “closely reviewing the court’s decision and evaluating next steps.”

“The county remains profoundly committed to supporting young people on their journeys toward healing, stability and healthy relationships,” the spokesperson said in an emailed statement.

The lawsuit was filed by nonprofit legal advocacy groups Children’s Rights and Alliance for Children’s Rights, along with Public Counsel and the Los Angeles-based private firm Munger, Tolles and Olson. The plaintiffs are 16- to 21-year-old L.A. foster youth who have mental health disabilities.

Their lawsuit alleges a host of systemic issues, including a lack of available and appropriate housing options for transition-aged youth, abrupt and arbitrary discharges from housing programs. Several of the named plaintiffs allege they became homeless after being pushed out of housing programs for minor violations like messy rooms or having unauthorized guests.

In one case, a plaintiff states the department pointed her toward a domestic violence shelter, rather than finding her new housing within the foster care system. In another, a plaintiff alleges the child welfare agency tried to close his extended foster care case for failing to meet education and employment requirements, despite the fact that he was homeless while in county custody.

Plaintiffs seek systemic changes to address current gaps: safe housing, mental health services and support that accounts for trauma and other struggles. They also seek to end what they call “discriminatory policies and practices” of “screening out” youth with disabilities from housing programs, and not offering accommodations and related supportive services. They aim to establish “enforceable standards” for teens and young adults with mental health disabilities in the county’s care.

In 2024, the U.S. Department of Justice filed a statement of interest in the case, suggesting that local policies leading to “unnecessary segregation” of youth with mental health disabilities violated the federal Americans with Disabilities Act.

“Youth with disabilities who do not receive the critical services that they need to thrive in the community often end up in a vicious cycle of institutionalization,” federal attorney Martin Estrada stated in a [press release](#). “Under the law, people with disabilities deserve to live and receive services in the most integrated setting appropriate to their needs, such as in their homes and communities.”

Lawyers for the plaintiffs praised the recent court of appeals ruling, which they said affirmed their clients’ right to fight for these changes in federal court.

“We hope the County and State will stop spending resources trying to evade accountability and start working toward real solutions,” said Grant Davis-Denny, a partner at Munger, Tolles & Olson LLP. “Because with each passing day, young people in their care go unhoused and are denied the mental health services they need.”

Daily Journal

The Indian Child Welfare Act is what's best for kids

Sep. 13, 2022

Placement with extended family and other caregivers identified by the Indian child's Tribe maintains a network of familiar relationships, maximizing continuity and protecting children facing the trauma of family separation.



Kathryn Eidmann
Attorney, Public Counsel



Tara Ford
Attorney, Public Counsel

This November, the United States Supreme Court is slated to consider the constitutionality of the Indian Child Welfare Act (ICWA) in *Haaland v. Brackeen* (Case Nos. 21-276, 21-377, 21-380).

Congress passed ICWA in 1978 to end the forced separation of Indian children from their families and culture and address the appalling history of harm and subsequent trauma experienced by Native communities. (We refer to "Indian children" because this is the term Congress uses to define the children eligible for ICWA protections.) While opponents of ICWA are challenging the statute primarily on Equal Protection and Article I grounds, a common theme that runs through their arguments is that ICWA is somehow harmful to Indian children. As lawyers for children, we know the opposite to be true: ICWA was enacted to "protect the best interests of Indian children," 25 U.S.C. § 1902, and that is exactly what it does.

First, ICWA safeguards the constitutional right to family integrity in child welfare proceedings involving Indian children. Because parents' interest in "the care, custody, and control of their children ... is perhaps the oldest of the fundamental liberty interests" recognized by the Supreme Court, the Constitution limits state intervention in the family. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Courts may not remove children and dissolve family ties simply to match children to the "best" resources or because a parent's care does not conform to the court's view of ideal parenting practices. While courts do consider a child's best interest when making placement determinations, ICWA ensures they do so within these well-established constitutional limitations.

ICWA's protections reflect the historical treatment of Indian families and children, the sovereignty of tribes, and the special protection owed to children. ICWA protects families from "unwarranted" removals by ensuring that Indian children are removed from their parents only when necessary to safeguard them from serious harm and that families are reunified when possible. In particular, ICWA prohibits removal of an Indian child into state

custody or termination of parental rights unless the state court finds that "active efforts have been made ... to prevent the breakup of the Indian family." 25 U.S.C. § 1912(d). And an Indian child may be removed to state custody or have parental rights terminated only upon a showing that remaining in parental custody "is likely to result in serious emotional or physical damage to the child," supported by testimony by a qualified expert witness. *Id.* § 1912(e), (f).

When Indian children require foster care or pre-adoptive or adoptive placements, ICWA's placement preferences promote the right to family integrity by prioritizing extended family and other tribal members. Placement with extended family and other caregivers identified by the Indian child's Tribe maintains a network of familiar relationships, maximizing continuity and protecting children facing the trauma of family separation. As the American Bar Association has recognized, "[d]ecades of research confirms that children who cannot remain with their parents thrive when raised by relatives and close family friends, known as kinship care. Children in foster care with relatives have more stable and safe childhoods than children in foster care with non-relatives, with greater likelihood of having a permanent home." Resolution 118 2019A § VI.i. (2019).

Second, ICWA's provisions reflect the same factors that states already direct their courts to consider when making best interests determinations in child welfare proceedings. Along with National Association of Counsel for Children and 30 other children's rights organizations, we submitted an amicus curiae brief in *Brackeen* reviewing the state statutes that direct courts to consider enumerated factors when making these decisions. The factors identified by these laws align with ICWA's fundamental principles: preserving family integrity, prioritizing placement with relatives, and maintaining community and culture.

ICWA promotes *family integrity* by establishing a high threshold for removing a child from parental custody. At least twenty-six states and four territories also prioritize family integrity as a guiding principle in their statutes or regulations, and several states guard against government intrusion in family life by including family integrity as a specific factor to be considered as part of a court's best interest determination.

If temporary or permanent removal from parental custody is warranted, ICWA directs state courts to prioritize, but does not mandate, *placement with extended family members*. Likewise, a majority of states express preference in statute for the placement of a child with relatives, and a number of states include this preference in their statutory guidance for determining a child's best interests.

By prioritizing placement with tribal members and ensuring that Tribes are properly informed of the relevant child welfare proceedings, ICWA preserves *maintaining community and culture*, including by preserving a connection to the child's tribal identity. Numerous state statutes also direct courts to consider community placement and the child's cultural needs and identity when making best interests determinations. For example, Georgia directs courts to consider the "child's background and ties, including familial, cultural, and religious." Ga. Code Ann. § 15-11-26(12).

From the moment a young person is placed in foster care, everything is at stake: their home, school, belongings, community, and relationships with family and friends. In short, their future. Judicial officers are faced with complex, weighty decisions and need more information - not less--to get it right. ICWA provides courts with the information necessary to make good decisions for Indian children. And because participants in the child welfare system may not have much experience working with Native American children, ICWA ensures the proper application of regular child welfare practices for children who, unlike other youth in the child welfare system, have a particular legal status as a result of their tribal affiliation. There is no doubt: ICWA is what's best for kids.

HIGH-NEEDS STUDENTS

Final settlement lands in seclusion-and-restraint lawsuit at Concord school

**CAROLYN JONES**

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REPUBLISH



Credit: Andrew Reed / EdSource

Teachers at a special-education school in Contra Costa County will undergo extensive training and make other improvements on how they handle students with severe behavioral and emotional challenges, wrapping up a high-profile lawsuit centered on the school's seclusion and restraint practices.

The settlement, announced this week, is between the Contra Costa County Office of Education, which operates the Floyd I. Marchus School Counseling and Education Program, and four students who were subject to seclusion and restraint while they were enrolled.

"This settlement has the ability to really improve the culture and climate of the school," said Dr. Mary Jo Dare, an education consultant who worked on the agreement for the plaintiffs. "The school staff want to do a good job. This gives them the tools to do so."

Isolating or using physical restraints on students, a practice known as seclusion and restraint, is legal in California as a way to protect students who are an immediate threat to themselves or others. It's meant to be used sparingly, and never as a means of discipline.

According to the lawsuit, staff at the Concord school secluded and restrained students far too often, causing them physical and psychological harm and violating their individualized education programs. In one case, staff hung one of the plaintiffs, an 8-year-old girl, on a wall "like a coat on a coat rack and spread her legs like an X," her mother said.

The plaintiffs, who were represented by the public interest law firm Public Counsel and the Los Angeles firm Sullivan and Cromwell, also sued the state Department of Education. That portion of the suit settled in September. Under that agreement, the state will closely monitor the school for two years and train staff on positive discipline.

Neither the state nor the County Office of Education admitted wrongdoing.

"Taking a case like this to court would have been expensive, time-consuming and can be damaging to students, staff and the agency," a spokesperson for the County

Office of Education said. “Settling the case allows us to continue serving students without the challenges of an ongoing lawsuit.”

The settlement with the Contra Costa County Office of Education goes beyond the state’s settlement, requiring even more staff training and implementing a system for parents to report concerns to the county’s special education office. The system recently went [live](#) on the school’s website. It also requires the school to adopt a social-emotional learning curriculum.

In addition, WestEd, the education consulting firm, will monitor the school’s progress and issue a quarterly report on how well the school is adhering to the settlement and how students are faring. The reports will be posted on the County Office of Education’s website.

Also, the County Office of Education will set aside \$125,000 for each of the four students named in the lawsuit to pay for academic tutoring, counseling and other services to help them regain the skills they lost as a result of the alleged missteps at the school.

The County Office of Education has already launched many of these changes.

“We will continue implementing the systems we have already put into place to best help the students we serve,” the office spokesperson said. “We have been working with WestEd for a number of years and look forward to continuing the work with them.”

Tara Ford, senior attorney at Public Counsel, said too many schools still overuse seclusion and restraint as a way to control students with behavioral challenges. Almost 3,000 students were secluded or restrained in California in 2019-20, the first year the state required districts to report such incidents under a new law.

“I think it is still the case that too many students with challenging behavior find themselves in schools that don’t have the capacity to support them,” Ford said. “We do hope that this (settlement) will create a model for other schools and states.”



Students at Havasupai School in Arizona in 1899. Photo: [Grand Canyon National Park's Museum Collection](#)

EDUCATION | LAW | NATIONAL

Indian students win round in bid to hold government accountable

Monday, April 2, 2018

Indian students who are seeking to hold the federal government responsible for the quality of education have won an early round in their historic lawsuit.

The students, who all hail from the [Havasupai Tribe](#), filed their case a year ago in January, just as the Donald Trump was about to take office. They are accusing the [Bureau of Indian Education](#) of failing to address their mental health, wellness and basic needs.

Judge Steven Logan has yet to rule on the merits of the complaint. But on March 29, he rebuffed the Trump administration's attempt to dismiss some of the key components of the case, known as [Stephen C. v. BIE](#).

In the 13-page ruling, a copy of which was posted on [Turtle Talk](#), Logan said federal law entitles the students to sue the BIE for not addressing their exposure to adversity and complex trauma. The Havasupai plaintiffs cited not only historical mistreatment of their people, but present-day issues like the legacy of boarding schools, involvement in the juvenile justice and child welfare systems and exposure to violence.

"This is a huge victory for Native students and their families because for the first time ever a federal court supports the idea that the federal government has an obligation to meet the mental health and wellness needs of students attending its schools," Alexis DeLaCruz, a staff attorney at the [Native American Disability Law Center](#), which filed the lawsuit on behalf of the Havasupai plaintiffs, said on Monday.

The mother of two of the Havasupai plaintiffs also welcomed the ruling. Her son, Durrel P., was sent out of state when the BIE school on the reservation said it could not accommodate his mental and special education needs, according to the complaint in the case. Her daughter, Taylor P., was victimized, physically and sexually, at the school.

"It means so much to me and my community that a federal judge has heard our voices," said Billie P. "I am hopeful that, at long last, current and future Havasupai students will get the support and resources they need to learn in school."

That's all the more reason why the students and the parents want to see improvements at the school. According to [BIE data from school year 2012-2013](#), Havasupai ranked at the bottom of achievement levels and few gain proficiency in reading or math.

"Each day the federal government continues to fight this lawsuit, Havasupai children lose another day of school that they will never get back," said Tara Ford, the clinical supervising attorney at the [Stanford Law School Youth and Education Law Project](#), who is serving of counsel in the case.

The [\\$1.3 trillion spending bill](#) that was signed into law last month provides \$579 million for elementary and secondary education programs at the BIE, which is part of the [Bureau of Indian Affairs](#). The amount is nearly \$59.2 million greater than the amount [President Trump](#) sought for those programs.

The bulk of the funding is distributed to BIE schools based on a [funding formula that is part of the Indian School Equalization Program](#). The formula takes into account student enrollment, so smaller institutions like Havasupai receive fewer dollars.

However, in August 2002, the BIA finalized an update to program's regulation in order to ensure that "special education students are placed in the least restrictive environment possible and that placements are based upon the needs of students, not the funding formula," according to a [notice published in the Federal Register](#) at the time.



Stephen C. v. Bureau of Indian Education: Reinvigorating the Federal Right to Education for Indian Children

BREANNA K. BOLLIG

Today, there are 183 federally funded Bureau of Indian Education (BIE) schools that primarily serve Indian children who live on or near reservations.¹ Despite Indian children having a federal right to education, however, BIE schools are in far worse conditions than state public schools. In addition to BIE school inadequacies, historical trauma resulting from the federal government's Indian boarding school policies has been exploited as a basis to over-discipline Native students in both public and BIE schools. Consequently, Indian children have some of the lowest rates of academic achievement in the United States.²

*Stephen C. v. Bureau of Indian Education*³ is the first federal-civil rights lawsuit holding the federal government accountable for both the general and special education inadequacies at a BIE operated school. Havasupai Elementary School, which is located on the Havasupai Reservation, serves students in kindergarten through eighth grade and is the only available option for many Havasupai children to obtain an education within their community.⁴ The Ninth Circuit in *Stephen C. v. BIE* held that nine Havasupai children and the Native American Disability Law Center had a valid federal claim against the Bureau of Indian Education for its failure to provide an

adequate education at Havasupai Elementary School.⁵ The plaintiffs also succeeded on their claim that the Bureau of Indian Education violated federal disability law by failing to provide accommodations and services to students who have been exposed to complex trauma.⁶

As a result, *Stephen C. v. BIE* presents a promising path forward for holding the federal government responsible to its obligation to ensure that Indian children have adequate and equal access to an education. It also demonstrates a legal basis for addressing the lasting effects of historical trauma caused by Indian boarding schools.

Bureau of Indian Education Schools

First, it is important to understand that BIE schools have historically and are currently failing to provide adequate educational opportunities for Indian children. The physical conditions of BIE schools are particularly astonishing. In 2015, one House of Representatives member explained that “[t]he details we have learned [of BIE schools] are shocking: falling ceilings, broken water heaters, electrical hazards, rotten floors, and rodent-infested classrooms. At a school I visited earlier this year, blankets hang over the doors in a desperate attempt to keep out the cold air.”⁷

In 2016, a Government Accountability Office (GAO) investigation concluded that the U.S. Department of Interior, which oversees the BIE, does not even have accurate or complete information regarding the safety and health conditions of BIE school facilities. Even though BIE schools are required to be inspected annually, the GAO found that 69 BIE schools were not inspected in 2015 and 54 BIE schools had not been inspected in the last four years. This is especially concerning because many BIE students are housed in the schools’

dormitories and, given the more secluded nature of BIE schools, an emergency response could be seriously delayed.⁸

Even when BIE schools are inspected, inspection reports are often inaccurate. For example, in 2011, a BIE school reported that the regional safety inspector conducted his entire “inspection” from his vehicle. The inspector’s report was only one page long and it failed to identify any deficiencies inside the school facilities. Concerned with the inspection, BIE school officials arranged for another inspection by the Department of Health and Human Services, which identified multiple serious safety and health problems including emergency lighting and fire alarms that did not work, electrical shock hazards, and defective fire doors.⁹

The GAO was also able to identify incidents where an inspection did occur, but the BIE failed to take appropriate action. Most unsettling was a school that had seven boilers located in student dormitories and classroom buildings that failed inspections due to elevated levels of carbon monoxide and natural gas leaks. The inspection found that the boilers were “critical hazards that posed an *imminent danger to life* and health,” which needed to be addressed within one day. Shockingly, students were not evacuated until approximately six months later and the repairs were not complete until approximately eight months after the inspection.¹⁰

Additionally, there are serious issues with BIE staffing and school expenditures. In 2021, the GAO’s ‘High-Risk Series’ reported that 33 percent of all BIE positions were *still* vacant—and this was after ‘some progress.’¹¹ At one point, external auditors found \$13.8 million in unallowable spending at 24 BIE schools. The GAO concluded the BIE’s response to these misused funds was only minimal. Another audit even found that approximately \$1.2 million in BIE federal funds were illegally transferred to an offshore account.¹²

BIE schools also largely fail to comply with federal disability laws that are designed to ensure that students with disabilities have equal access to an education. In fact, in response to the BIE’s continued non-compliance with the Individuals with Disabilities Education Act (IDEA), the Department of Education withheld 20 percent of the BIE’s fiscal year 2019 IDEA Part B funds. Likewise, a GAO study found that during the 2017-2018 school year, BIE schools did not account for almost 40 percent of students’ special education and services that were required under IDEA.¹³

Unfortunately, given these BIE deficiencies, major achievement gaps are expected. For the 2011-2012 school year, the national average high school graduation rate was 80 percent, but the graduation rate for BIE schools was only 53 percent. Not only do BIE schools have a lower graduation rate than any state’s graduation rate, but it is even the lowest graduation rate when comparing racial groups in public schools throughout the United States.¹⁴ According to the 2019 National Indian Education Study, eighth grade BIE students have consistently scored lower on math and reading than Native students who attend public schools.¹⁵ This is especially concerning because there is already a major achievement gap for Native students in public schools. For example, only 59 percent of eighth grade Native students nationally are reading at or above grade level compared to 73 percent of all students and 82 percent of white students.¹⁶

It is very likely that these achievement gaps have only grown as Native communities were disproportionately impacted by the COVID-19 pandemic and BIE schools were in no way prepared for distance learning. The GAO has already concluded that the BIE failed to provide adequate guidance for distance learning and

failed to meet the technology needs of BIE students. While the BIE worked to improve internet access during the pandemic, most BIE students still did not have a laptop or other device to access online learning or special education services. The BIE did not order laptops for students until September 2020. By December 2020, over 80 percent of laptops still had not been distributed to BIE students, and by March 2021—approximately one year after school buildings began closing for COVID-19—nearly 20 percent of the laptops were still not distributed to BIE students.¹⁷

Altogether, it is apparent that BIE schools are completely inadequate. In addition to BIE schools being in worse conditions than public schools, BIE students with disabilities are particularly at-risk for not being able to access an education as a result of the BIE’s non-compliance with federal disability law.

The Federal Right to Education for Indian Children

The plaintiffs in *Stephen C. v. BIE* brought two general education claims in response to the BIE’s failure to provide an adequate education at Havasupai Elementary School. For these claims, plaintiffs relied on the federal right to education for Indian children.¹⁸ While every state provides for a state right to education, Indian children also have a federal right to education based on treaties, federal statutes, executive orders, and U.S. Supreme Court cases.¹⁹

Indian education rights were initially established by treaties between the federal government and various tribes in the United States. These early treaties were often in exchange for land and to ensure peace between United States and Tribal citizens. Despite these treaties, however, the federal government historically used Indian boarding schools as a weapon to assimilate Tribal children, take Tribal land, and disrupt Tribal economies.²⁰

In the 1970s, the United States sought to end its harmful assimilation tactics and completely shifted its federal Indian policy by recognizing the federal-tribal trust relationship based on treaty and international law.²¹ As recently explained by the U.S. Supreme Court, “the Federal Government has ‘charged itself with moral obligations of the highest responsibility and trust’ towards Indian tribes.”²² In recognition of this trust relationship, Congress has enacted sweeping legislation involving Indian education rights.²³

The Indian Education Act was groundbreaking legislation enacted in 1972 to help meet the education needs of Indian children. The current version of the Indian Education Act provides that “the Federal Government has the *sole responsibility* for the operation and financial support of the Bureau of Indian Affairs funded school system,” and “it is the policy of the United States to fulfill the Federal Government’s unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children.”²⁴

Further, the Indian Education Act requires that BIE schools are “of the highest quality and provide for the basic elementary and secondary educational needs of Indian children, including meeting the unique educational and cultural needs of those children.”²⁵ Specific requirements for BIE schools are set out in the Code of Federal Regulations.²⁶ The current regulations are quite extensive regarding required staffing, curriculum, educational resources, and other minimum standards.

The federal right to education for Indian children is so robust that it has only been challenged in federal court once—in *Meyers v. Board of Education*. In this case, however, Indian education rights were only strengthened as the court held that in addition to a federal

right to an education, Indian children also have a state right to an educational opportunity that is *equal* to all other persons. Moreover, an educational opportunity that requires a student to leave their home is not an equal opportunity.²⁷

In *Stephen C. v. BIE*, there were clear general education inadequacies at Havasupai Elementary School which violated federal law. The complaint explains that teacher vacancies at Havasupai Elementary School have been covered by adults who do not have teaching credentials, by temporary instructors who rotate through the position after only two weeks, and by combining multiple grade levels. Once, a single teacher was responsible for teaching every student in grades four through eight, forcing the teacher to travel back and forth between classrooms throughout the day. Sometimes even the school janitor, the school secretary, and older children would try to “teach” to help fill these positions. The school has repeatedly ended the school-day early and has shut the school down altogether for weeks at a time due to staffing shortages. Even when the school was open, this lack of supervision has enabled unsafe behaviors such as bullying and physical and sexual assault.²⁸

Although there are extensive federal curriculum requirements, Havasupai Elementary School only provided instruction in math, reading, and writing. There was no instruction in social studies, fine arts, science, computer literacy, career exploration, or aspects of Havasupai culture, as required. Havasupai Elementary School also failed to provide any instruction in Havasupai language and did not even evaluate student learning styles and native language abilities. Further, basic educational resources were not provided—such as a functioning library, adequate textbooks, or extracurricular activities. Havasupai Elementary School also did not provide behavioral health services or comply with requirements for disciplinary procedures. Due to these major deficiencies, it is estimated that less than 20 percent of students at Havasupai Elementary School eventually graduate from high school.²⁹

Significantly, even with these apparent violations of federal law, the federal district court in *Stephen C. v. BIE* held that the plaintiffs’ claims were barred by the Administrative Procedure Act (APA).³⁰ The APA provides that the court may compel “agency action that is unlawfully withheld or unreasonably delayed.”³¹ While the definition of “agency action” under the APA includes the failure to act, plaintiffs must show the failure was discrete and final agency action that the agency was required to take.³² The district court held that this requirement was not met because the plaintiffs’ claims, when aggregated, failed to identify discrete and final agency action. For this holding, the court relied on the Supreme Court decision *Lujan v. National Wildlife Federation* and claimed that “it is well settled that a plaintiff cannot seek ‘wholesale’ improvement of an agency program under the APA through the courts.”³³

In *Stephen C. v. BIE*, the district court also held that two of the plaintiffs’ claims were moot because they no longer attended Havasupai Elementary School.³⁴ This decision depended on whether plaintiffs still had any effective relief. Under the APA, plaintiffs cannot recover money damages for an agency’s failure to act.³⁵ Conversely, providing compensatory education services is a distinct remedy which is designed to make up for educational services which should have been received in the first place. For example, as a part of compensatory education services, a defendant school district can agree to provide the make-up services themselves or they can agree to provide compensation so that the plaintiff can receive the

make-up services from another provider. Understandably, providing compensatory education services is a typical remedy for general and special education non-compliance. Nonetheless, by holding that the plaintiffs’ claims were moot, the court established that compensatory education services are monetary damages barred by the APA.

On appeal, in a landmark decision, the Ninth Circuit reversed and remanded the case in 2022, explaining that “*Lujan* did not foreclose judicial intervention whenever such intervention might result in sweeping changes to an agency program.”³⁶ The Ninth Circuit further held that the plaintiffs met their burden in showing that the BIE failed to take final and discrete agency action because the plaintiffs had identified 13 regulations under the Indian Education Act that were unlawfully withheld or unreasonably delayed at Havasupai Elementary School.

The Ninth Circuit also reversed the decision that the plaintiffs’ claims were moot, reasoning that compensatory education qualifies as an equitable remedy which is not barred by the APA’s non-monetary damages requirement. Therefore, plaintiffs are now able to proceed with the general education claims at the district court level.³⁷

The Ninth Circuit’s holding in *Stephen C. v. BIE* proves monumental in showing that the federal right to education for Indian children can be an effective means to improve inadequate and inequitable BIE schools. Not only is the federal government responsible for not providing an adequate education at Havasupai Elementary School, but the BIE could be held accountable at every other BIE school through similar lawsuits. Perhaps the federal right to education for Indian children can even be used to improve inadequate and inequitable state public schools that Indian children attend. Undoubtedly, the federal government finally fulfilling its trust responsibility for the education of Indian children is the least it could do to address its early role in implementing destructive and even deadly federal Indian boarding school policies.

Historical Trauma from Indian Boarding Schools

The historical trauma caused by federal Indian boarding school policies continues to impact the education outcomes of Native students today. Under the Indian boarding school policies, the federal government began kidnapping Indian children and placing them in Indian boarding schools which operated from 1819 to at least 1969. At these schools, Indian children were cut off from their families and cultures and abuse, disease, malnourishment, and overcrowding were well-documented.³⁸

The U.S. Department of Interior’s recent investigation shows that the United States applied “systematic militarized and identity-alteration methodologies” in Indian boarding schools, such as renaming and cutting the hair of Indian children as well as prohibiting Tribal languages, religions, and cultural practices. Indian boarding school rules were enforced by abusive methods including corporal punishment, solitary confinement, whipping, and withholding food. The conditions were so poor that the Department of Interior expects that investigations will show that tens of thousands of Tribal children have died at these schools.³⁹

Significantly, research shows that trauma alters a person’s genetics, which are passed down from generation to generation.⁴⁰ In agreement, Indian boarding school attendance itself has been linked to psychological harm and chronic health problems on future generations.⁴¹ Adverse Child Experience (ACE) studies have also shown that the average prevalence of trauma among Native children today

is approximately 40 percent higher than in individuals who identify as Black or Hispanic, and over 50 percent higher than in individuals who identify as white.⁴²

Moreover, a student's ability to learn is directly impacted by trauma. Trauma dysregulates and over-activates the body's stress-response system and even physically alters children's brain structures. Specifically, trauma impairs development of areas of the brain needed for school success while causing areas of the brain that are responsible for fear, anxiety, and impulsivity to essentially overdevelop. Because of this, trauma often manifests as poor executive functioning skills, speech and auditory processing deficiencies, math or reading difficulties, hypersensitivity or hyposensitivity, poor memory, social-emotional issues, or other symptoms of ADHD. Trauma also manifests as misbehaviors by causing children to perceive non-threatening stimuli as threatening.⁴³

The impact of trauma on learning is especially troublesome for students with complex trauma, which refers to multiple, chronic, or prolonged experiences with trauma. In agreement, ACE studies show that a child exposed to at least one adverse childhood experience is 10.3 times more likely to experience a learning or behavior problem, and a child who has experienced at least four adverse childhood experiences is 32.6 times more likely to have a learning or behavior problem.⁴⁴

Despite research showing that trauma inhibits learning and promotes misbehaviors, schools have only responded to trauma with suspensions and expulsions. Consequently, ACE studies show a clear relationship between trauma and indicators of poor school functioning, such as chronic absenteeism, disruptiveness, failure to meet grade-level standards, expulsions from preschool, and failure to graduate from high school and college.⁴⁵

Responding to trauma with suspensions and expulsions is particularly problematic because suspensions, expulsions, and even point systems have been shown to be ineffective for children who have experienced trauma.⁴⁶ Such exclusion could even re-traumatize a child or further undermine their sense of belonging. Additionally, Native students are already disproportionately excluded from the classroom. The U.S. Commission on Civil Rights found that Native students are more likely to receive harsher and longer punishments than white students for similar offenses.⁴⁷ Similarly, the GAO found that Native students with disabilities are 3.5 times more likely to receive multiple out-of-school suspensions and three times more likely to be expelled compared to white students with disabilities.⁴⁸

Ultimately, the failure to address trauma in schools has aggravated the harm caused by Indian boarding schools and is a major contributor for the poor education outcomes of Indian children today.

The Federal Right to Special Education for Students with Complex Trauma

In addition to the general education claims, the plaintiffs in *Stephen C. v. BIE* also brought various special education claims in response to the BIE's failure to comply with federal disability law at Havasupai Elementary School. For these claims, plaintiffs relied on Section 504 of the Rehabilitation Act (Section 504) and its implementing regulations.⁴⁹

Section 504 prohibits discrimination on the basis of a disability in federally funded programs. It also provides various requirements and procedural safeguards that help ensure students with disabilities have equal access to an education. For illustration, Section 504 may require a broad range of special education accommodations

and services, such as one-on-one aides, assistive technology, speech and language services, occupational therapy services, psychological and counseling services, behavior intervention plans, and accommodations necessary to ensure physical accessibility to educational facilities or instruction. Importantly, such education services must be provided in the least restrictive environment possible. Schools must also comply with Section 504's identification, notice, evaluation, and placement procedures for students with disabilities.⁵⁰

While the Individuals with Disabilities Education Act (IDEA) provides more comprehensive protections for students with disabilities, Section 504 defines disability more broadly and does not require plaintiffs to exhaust their administrative remedies before bringing an action in court.⁵¹ The definition of a "disability" under Section 504 is a "physical or mental impairment that substantially limits one or more major life activities," such as "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."⁵²

The American Disability Act (ADA) was not raised in *Stephen C. v. BIE*; however, the ADA's protections and definition of a disability are very similar to Section 504.⁵³ The main difference between the ADA and Section 504 is that the ADA applies to all places of public accommodations,⁵⁴ including private schools, while Section 504 only applies to programs receiving federal financial assistance or conducted by an executive agency.⁵⁵

At Havasupai Elementary School, the violations of Section 504 were alarming. The complaint in *Stephen C. v. BIE* explains that Havasupai Elementary School did not have enough qualified special education teachers and did not even employ an occupational therapist, physical therapist, or speech therapist. There also was no special education classroom and students with disabilities were repeatedly excluded from the classroom in violation of Section 504 via suspensions. The complaint further detailed the BIE's failure to locate, identify, and implement procedural safeguards to Havasupai students with disabilities.⁵⁶

Alongside these traditional special education claims, the plaintiffs in *Stephen C. v. BIE* also asserted that complex trauma is a disability under Section 504 and, therefore, student plaintiffs were eligible for special education services on this basis alone. Relying on Section 504's definition of a disability, the plaintiffs argued that complex trauma is a disability as it physically alters a person's brain structure and limits a student's ability to learn, read, concentrate, think, and communicate. The complaint also specifically alleged that the student plaintiffs' historical trauma—including family experience with Indian boarding schools—contributes to their present day adversity. Accordingly, the plaintiffs claimed special education services should include behavioral health resources, mental health resources, and culturally relevant interventions.⁵⁷

In a historic decision, the federal district court in *Stephen C. v. BIE* agreed that complex trauma qualifies as a disability under Section 504. The court explained that the student plaintiffs were exposed to complex trauma as a result of, but not limited to, the following: historical trauma, experiences of physical and sexual violence, involvement in the juvenile justice or child welfare system, extreme poverty, alcohol and substance abuse in the family and community, and denial of access to an education. Notably, a medical diagnosis was not necessary for the student plaintiffs to qualify as being disabled by virtue of their exposure to complex trauma.⁵⁸

Concerningly, the federal district court later dismissed all the special education claims, holding that Section 504 does not apply to BIE schools at all. Following a request for partial relief, however, the district court held that this decision was “manifest error.” The court further clarified that the BIE is in fact subject to Section 504. While the BIE is not subject to the Department of Education’s regulations implementing Section 504, the BIE is still subject to the U.S. Department of Interior’s implementing regulations.⁵⁹

In 2020, the district court approved a landmark settlement agreement regarding the special education non-compliance at Havasupai Elementary School. Under the agreement, each student plaintiff would receive \$20,000 for compensatory educational services. An independent and neutral monitor would also review Havasupai Elementary School’s compliance with Section 504 over the next three years. Moreover, the defendants would develop an initial compliance plan and corrective action plan with the monitor and with consideration of the plaintiffs’ comments and recommendations. The defendants also agreed to pay plaintiffs’ attorney fees and costs.⁶⁰

While special education compliance is still an issue at Havasupai Elementary School,⁶¹ the outcome of *Stephen C. v. BIE* and the recognition of trauma as a disability demonstrates an effective legal basis for addressing the lasting harms of the Indian boarding schools. For instance, traditional services under Section 504 could be used to assist children whose language development, sensory processing, self-regulation, or other skills were impaired as a result of trauma. Other behavioral health resources, mental health resources, and culturally relevant interventions could be provided as necessary under a Section 504 plan as well.

Importantly, recognizing trauma as a disability prevents schools from resorting to ineffective and harmful suspensions and expulsions in response to a student’s problematic behaviors that are related to their trauma. Instead of such discriminatory exclusions, a behavior intervention plan under Section 504 can work to address the underlying cause of a student’s misbehaviors. For illustration, children exposed to trauma need a relationship based on “trust, consistency, acceptance, unconditional support, and a sense of belonging” to become accountable for their misbehaviors. Thus, a behavior intervention plan implemented under Section 504 could instruct school staff members to remain calm and express genuine concern for a child who is dysregulated.⁶²

Accommodations could also work to minimize a child’s exposure to their unique triggers, and to ensure a calm and predictable classroom. For example, a child exposed to trauma may benefit from a preferential seating accommodation under their Section 504 plan so that they can sit close to an adult or another person who they perceive to be as safe. Ultimately, a Section 504 plan could be very effective in finally addressing behaviors of students who suffer from trauma because it could implement the above practices and more, depending on a student’s unique needs.⁶³

Notably, the recognition of trauma as a disability under Section 504 and the American Disability Act has been applied to a state public school in *Peter P. v. Compton Unified School District*. The outcome of *Peter P. v. Compton Unified School District* was the development of the Compton Unified School District’s Wellness Initiative, which provides a systematic approach to addressing complex trauma within the school district.⁶⁴ This recognition of trauma as a disability has also been applied to New Mexico’s foster care system in *Kevin S. v. Blalock*, which was filed shortly after *Stephen C. v. BIE*. Remarkably,

the settlement agreement reached in *Kevin S. v. Blalock* requires the implementation of a trauma-responsive system of care for all children in New Mexico’s custody.⁶⁵

The potential for bringing lawsuits similar to *Stephen C. v. BIE* are especially powerful as plaintiffs are able to pursue compensatory education services while simultaneously moving for systematic trauma-informed care in BIE schools. Further, *Peter P. v. Compton Unified School District* and *Kevin S. v. Blalock* demonstrate how Section 504 and the ADA can also be used to improve public schools and other systems that discriminate based on trauma.

Conclusion

The lack of educational opportunities for Indian children attending Bureau of Indian Education schools deserves far more attention. Not only does *Stephen C. v. BIE* raise awareness of the federal right to education for Indian children, but it reinvigorates it by showing that the federal government can be held accountable for inadequate and inequitable BIE schools. Further, *Stephen C. v. BIE* demonstrates how federal disability law protections can be utilized in schools to address the lasting effects of historical trauma from the Indian boarding schools. Moving forward, this innovative legal strategy may be a turning point for improving education outcomes for Indian children throughout the United States. ☉



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Endnotes

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⁴⁵*Id.*

⁴⁶*Id.* at 830.

⁴⁷U.S. COMMISSION ON CIVIL RIGHTS, BEYOND SUSPENSIONS EXAMINING SCHOOL DISCIPLINE POLICIES AND CONNECTIONS TO THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS OF COLOR WITH DISABILITIES (2019) (available at <https://www.usccr.gov/files/pubs/2019/07-23-Beyond-Suspensions.pdf>).

⁴⁸*See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-258, K-12 EDUCATION DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS OF DISABILITIES 73 (2016).

⁴⁹Third Amended Complaint, *supra* note 4, at 60-68.

⁵⁰*See* 29 U.S.C.A. § 794; 34 C.F.R. Part 104.

⁵¹Laura Rothstein, *Students With Disabilities A Half-Century of Progress*, in THE OXFORD HANDBOOK OF U.S. EDUCATION LAW 401, 404-10 (Kristine Bowman, 2021).

⁵²42 U.S.C. § 12102.

⁵³Laura Rothstein, *supra* note 51, at 406.

⁵⁴42 U.S.C. § 12132.

⁵⁵29 U.S.C. § 794(a).

⁵⁶Third Amended Complaint, *supra* note 4, at 60-68.

⁵⁷*Id.* at 14, 46, 60-68.

⁵⁸*Stephen C. v. BIE*, No. CV-17-08004-PCT-SPL, 2018 WL 1871457 at *5-7 (D. Ariz. March 29, 2018).

⁵⁹*Stephen C. v. BIE*, No. CV-17-08004-PCT-SPL, 2020 WL 2319976 at *3 (D. Ariz. May 8, 2020).

⁶⁰BUREAU OF INDIAN EDUCATION, <https://www.bie.edu/sites/default/files/inline-files/stephen%20settlement%20agreement%209.24.20%20FINAL%20%28fully%20executed%29.pdf> (last visited March 26, 2022).

⁶¹*See* Rebecca Youngman, HAVASUPAI ELEMENTARY SCHOOL SECTION 504 COMPLIANCE PLAN INDEPENDENT MONITOR REPORT 2 (2021).

⁶²Nicole Tuchinda, *supra* note 40, at 831.

⁶³*Id.* at 826.

⁶⁴*Peter P. v. Compton Unified School District*, 135 F. Supp. 3d 1098 (C.D. Cal. 2015); PUBLIC COUNSEL, <https://publiccounsel.org/issues/education-equity/trauma-learning/> (last visited Aug. 30, 2023).

⁶⁵Tara Ford & Joanne Newman, *Youth and Education Law Project Helps to Steer a Landmark Settlement in Kevin S. et al. v. Blalock, et al. – A Victory for Foster Children Impacted by Complex Trauma*, STANFORD LAW SCHOOL BLOGS, <https://law.stanford.edu/2020/04/03/youth-and-education-law-project-helps-to-steer-a-landmark-settlement-in-kevin-s-et-al-v-blalock-et-al-a-victory-for-foster-children-impacted-by-complex-trauma/> (last visited Aug. 30, 2023).