

Wyatt v. Koteck Settlement and Neutral's Initial Review

PREPARED FOR: Senate Interim Committee on Human Services
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Outline

- Background
- Settlement Agreement
- Appointment of Mr. Kevin Ryan
- Breakdown of Initial Review



Background



Case Timeline



Origins of the Case

- Federal lawsuit filed in 2019 on behalf of 10 children in ODHS custody between the ages of 1 and 17
- Plaintiffs represented by A Better Childhood, Disability Rights Oregon, and Davis Wright Tremain LLP
- Defendants named as the Governor, the Director of ODHS, and ODHS itself, represented by DOJ and Markowitz Herbold PC



Origins of the Case

Plaintiffs alleged that ODHS failed to protect children in its custody from harm and trauma, citing:

- understaffing of caseworkers;
- insufficient assessment of children's needs;
- lack of disability accommodations;
- frequent placement moves;
- inappropriate placements such as homeless shelters, hospitals, and out-of-state facilities;
- inadequate resources for foster caregivers;
- denial of children's sexual or gender identities;
- deprivation of transitional services for independent adulthood, etc.



Note: See Initial Complaint for full description.

Class Action Certified

Plaintiffs sought class status to represent the 8,000 children who were then in ODHS' legal and physical custody, all children who will be ODHS custody, and sub-classes of children with disabilities (~50%), those aging out of foster care (~900), and those who identify as sexual or gender minorities (~400).

Court certified the classes in 2022.

- General Class: "All children for whom the Oregon Department of Human Services ('DHS') has or will have legal responsibility and who are or will be in the legal or physical custody of DHS."
- Americans with Disabilities Act (ADA) Subclass: "All members in the General Class who have or will have physical, intellectual, cognitive, or mental health disabilities."
- Sexual and Gender Minorities (SGM) Subclass: "All members of the General Class who identify as sexual or gender minorities, including lesbian, gay, bisexual, queer, transgender, intersex, gender non-conforming, and non-binary children."
- Aging-Out Subclass: "All members of the General Class who are or will be 14 years old or older, who are eligible for transition services and lack an appropriate reunification or permanency plan."



Note: See Initial Complaint and Court's Opinion and Order on Class Certification (pp. 59-70) for full description.

Settlement Agreement



Settlement Agreement

- Shortly before going to trial, the parties reached a settlement agreement in spring 2024
- Parties disagreed on the scope of “Children in Care” covered by the agreement
 - Later resolved by 9th Circuit opinion in August 2025
- Court would appoint Neutral to review progress in ODHS’ efforts to improve child welfare outcomes based on several defined metrics
- Specified the Neutral’s role as a qualified subject matter expert for Oregon’s child welfare system
- Neutral’s Initial Review due by April 30, 2025
 - Later extended to July 29, 2025
- Ongoing collaboration between the court, the parties’ counsel, and the Neutral every six months
- Neutral to monitor substantial compliance and submit Annual Review each September starting in 2026



Definitions included in Settlement Agreement

Term	Definition
Categories	"The particular areas of assessment set forth in Section 2 of the Settlement Agreement <i>[ODHS Child Welfare Improvements]</i> ."
CFSR	"The Child and Family Services Reviews process conducted by the Children's Bureau..."
Child(ren) in Care	"Children who are in the legal and physical custody of ODHS." <i>Note: The parties disputed the scope of this and required a ruling by the 9th Circuit.</i>
Efforts	"All actions, policies, practices, and procedures made and/or undertaken by ODHS to achieve Ultimate Outcomes..."
Maltreatment	"All abuse as defined in ORS 419B.005 and ORS 418.247... which includes all Child(ren) in Care..."
Measurements	"Methods of assessing progress toward Ultimate Outcomes."



Note: See Settlement Agreement (pp.1-2) for full set of definitions.

Definitions, continued

Term	Definition
Services	"Services identified in the case plan for a Child in Care as defined in 42 U.S.C. § 675(1)."
State Agency	"Any officer, board, commission, department, division, or institution in the executive branch of the government of the State of Oregon."
Substantial Compliance	"Sufficient and sustained good faith and meaningful Efforts that work toward achieving the Ultimate Outcomes, which does not require strict compliance, but requires meaningful progress toward the Ultimate Outcomes."
Timelines	"Specific benchmarks, dates, and/or periods of time by which to achieve Measurements and Ultimate Outcomes."
Ultimate Outcomes	"Specific, concrete, and identifiable metrics that are goals to be met at the conclusion of the term of this Settlement Agreement."



Note: See Settlement Agreement (pp.1-2) for full set of definitions.

ODHS Child Welfare Improvements

Section 2 of the Settlement Agreement requires that ODHS work with the Neutral to set Ultimate Outcomes and qualitative improvements for the following Categories and Measurements:

- "Rate of Maltreatment of Children in Care"
- "Re-entry rate for Children in Care"
- "Timeliness of completion of initial case plans for Children in Care"
- "Timelines to complete professional mental health and medical assessments and referrals... for a Child in Care"
- "Appropriateness and quality of placements and Services of Children in Care"
- "Notification and reporting required by Oregon law concerning Maltreatment of Children in Care"



Note: See Section 2 of the Settlement Agreement (pp. 3-5) for full set of improvements..

Court-Appointed Neutral



Neutral's Charge per the Settlement Agreement

- "Act as a subject matter expert to assess Oregon's child welfare system..."
- "Determine Measurements, Ultimate Outcomes, and Timelines..."
- "Annually determine whether ODHS's Efforts are sufficient to accomplish Measurements, Ultimate Outcomes, and Timelines" based on qualitative and quantitative assessment
- "Recommend changes, if any, to Efforts, Measurements, Ultimate Outcomes, and Timelines"
- "Determine if and when sufficient Efforts and Ultimate Outcomes have been met and if any Ultimate Outcomes may be removed from reporting requirements"
- "Determine if Ultimate Outcomes have been substantially complied with... as to warrant an exit from the terms of the Settlement Agreement"



Note: See Section 3 of the Settlement Agreement (pp. 1-2) for full description.

Kevin Ryan Appointed as Neutral

- Unable to reach agreement, the parties each submitted separate nominees for Neutral to the Court
- Court selected plaintiffs' nominee, Kevin Ryan, in June 2024
- Mr. Ryan has prior experience serving as Neutral for federal child welfare cases in Florida, Michigan, Oklahoma, Texas, and New Mexico.
- Before that, he served as Child Advocate and Commissioner of Human Services for New Jersey.
- Court extended the deadline for Mr. Ryan to submit the Initial Review from April 30, 2025 to July 29, 2025



Note: See Plaintiffs' Nomination of Kevin Ryan for Settlement Neutral, Court's Opinion and Order on Neutral's Appointment, and Transcript of Fairness Hearing (pp. 68-100) for further descriptions of Mr. Ryan's qualifications.

Initial Review



Outcomes and Measurements

- Initial Review by Neutral Kevin Ryan submitted to the Court on July 29, 2025.
- The Initial Review contains ten Ultimate Outcomes and 14 Measurements.
- Measurements outline the methods of assessing progress toward the Outcomes.
 - Measurements 1-2 and 4-11 are associated with specific Outcomes.
 - Measurements 3 and 12-14 will be assessed annually but do not contain "goals to be met at the conclusion" of the Settlement Agreement.
- Many measurements and outcomes utilize standards and methodology included in the Child and Family Services Reviews (CFSRs) Round 4.
 - At the federal level, the Children's Bureau conducts the CSFR to review state child welfare systems.



Category 1: Rate of Maltreatment of Children in Care

Measurement	Description	Ultimate Outcome	Timeline	Notes
#1: Maltreatment in Care	Of all children in foster care in a 12-month period, the rate of victimization per 100,000 days	9.07 or less per 100,000 days	Achieve by 9/30/2029 with sustained performance for three consecutive years	Includes all children in legal or physical custody of ODHS
#2: Maltreatment in Care	Of all children in foster care in a 12-month period, the rate of victimization per 100,000 days	9.07 or less per 100,000 days	Achieve by 9/30/2029 with sustained performance for three consecutive years	Excludes days a child is living at home or on a Trial Home Visit and excludes incidents of maltreatment that occur during these days



Note: See Initial Review (pp. 3-4) for full measurement descriptions.

Category 1: Cont.

Measurement	Description	Ultimate Outcome	Timeline	Notes
#3: Risk and Safety Assessment	Qualitative review examining if the agency made concerted efforts to assess and address risk and safety concerns of children in care	N/A	Assessed annually for progress	Based on strength rating in CFSR Round 4 case reviews. Includes children in ODHS custody for at least 6 continuous months prior to Oct. of each assessment year. ¹



Note: See Initial Review (pp. 4-5) for full measurement descriptions.

¹ Consistent with federal methodology, reviewed cases are rated as "Strength" or "Needs Improvement"

Category 2: Re-entry rate for Children in Care

Measurement	Description	Ultimate Outcome	Timeline
#4: Rate of Re-entry to Foster Care	Of all children who exit foster care in a 12-month period to reunification, living with relatives, or guardianship, the percent who reentered care within 12 months	5.6 percent or fewer	Achieve by 9/30/2028 with sustained performance for three consecutive years.



Note: See Initial Review (p. 5) for full measurement descriptions.

Category 3: Timeliness of Initial Case Plans for Children in Care

Measurement	Description	Ultimate Outcome	Timeline	Notes
#5: Timely Case Plans ¹	Percentage of children entering care during a 12-month period who were due to have a completed case plan and had a completed case plan within 60 days of entry	At least 90% of children entering care in the 12-month period due to have a plan had a completed plan within 60 days of entry	Achieve by 4/1/2028 with sustained performance for three consecutive years	Based on monthly progress reports to the Governor. Data to be reported on a 60-day lag.

Note: See Initial Review (pp. 5-6) for full measurement descriptions.

¹ It is a federal requirement that initial case plans should be completed within 60 days of a child's placement in foster care ([45 CFR 1356.21 \(g\)](#)).



Category 4: Timeliness to Complete Professional Mental Health and Medical Assessments and Referrals for Reasonable and Necessary Medical and Mental Health Care, Services and Treatment for a Child in Care

Measurement	Description	Ultimate Outcome	Timeline	Notes
#6: Nursing Assessments	Percentage of children entering substitute care during the period (calendar year) who receive a complete ODHS nursing assessment within 10 days of entry	At least 90% of children entering substitute care will receive a completed ODHS nursing assessment within 10 days of entry	Achieve by 12/31/2028 with sustained performance for three consecutive years	"The Nursing Assessment means an assessment conducted by a DHS-contracted or DHS-employed nurse" and includes aspects further defined in the initial report. ¹



Note: See Initial Review (p. 6) for full measurement description and definition of Nursing Assessment.

¹ Initial Review, page 6, footnote 6.

Category 4, Continued

Measurement	Description	Ultimate Outcome	Timeline	Notes
#7: Mental Health Assessment	Percentage of children aged 3 and older who enter substitute care and receive age-appropriate mental health assessment within 60 days of entry	At least 90% of children age 3+ receive age-appropriate mental health assessments within 60 days	Achieve by 12/31/2029 with sustained performance for three consecutive years.	"A mental health assessment includes a comprehensive evaluation conducted by a community based Qualified Mental Health Professional." A Child and Adolescent Needs Assessment (CANS) and the Child and Adolescent Trauma Screen (CATS) do not meet the definition of mental health assessment, according to the Initial Review. ¹



Note: See Initial Review (pp. 8-9) for full measurement description and definition of Mental Health Assessment

¹ Initial Review, page 8, footnote 10

Category 4, Continued

Measurement	Description	Ultimate Outcome	Timeline	Notes
#8: Complete Medical Assessments	Percentage of children who receive a complete medical assessment with a primary health provider (PHP) within 60 days of entering substitute care	At least 90% of children entering substitute care will receive an assessment within 60 days <i>(excludes children not remaining in care for at least 60 days)</i>	Achieve by 12/31/2029 with sustained performance for three consecutive years	A complete mental health assessment means "an assessment by a health care provider within the child's CCO Medical Home [including] a thorough examination of the child's physical health and developmental status, as well as screenings for potential health issues and referrals for specialized care..." ¹



Note: See Initial Review pp. 9-10 for full measurement description

¹ Initial Review, page 9-10, footnote 13.

Category 5: Appropriateness and Quality of Placements and Services for Children in Care

Measurement	Description	Ultimate Outcome	Timeline
#9: Appropriateness and Quality of Placements	Qualitative case review examining if the child in foster care was in a stable placement and whether there were any changes in the placement in the best interest of the child and consistent with achieving permanency goals	At least 90% of qualitatively reviewed cases annually rated as a Strength ¹	Achieve by 4/1/2028 with sustained performance for three consecutive years
#10: Physical Health Needs	Qualitative case review examining if the agency addressed the physical health needs of children, including dental health needs	At least 90% of qualitatively reviewed cases annually rated as Strength ¹	Achieve by 4/1/2028 with sustained performance for three consecutive years



Note: See Initial Review (pp. 11-13) for full measurement description.

¹ Consistent with federal methodology, reviewed cases are rated as "Strength" or "Needs Improvement"

Category 5, Continued

Measurement	Description	Ultimate Outcome	Timeline
#11: Mental/Behavioral Health of the Child	Qualitative case review examining if the agency addressed the mental/behavioral health needs of children	At least 90% of qualitatively reviewed cases annually rated as a Strength ¹	Achieve by 4/1/2028 with sustained performance for three consecutive years
#12: Needs Assessment and Services for Children	Qualitative case review examining if the agency made concerted efforts to assess the needs of and provide services to children, to identify the services necessary to achieve case goals and adequately address the issues relevant to the agency's involvement with the child and family	N/A	Assessed annually for progress



Note: See Initial Review (pp. 13 –14) for full measurement description.

¹Consistent with federal methodology, reviewed cases are rated as "Strength" or "Needs Improvement"

Category 6: Notification of Maltreatment

Measurement	Description	Ultimate Outcome	Timeline	Notes
#13: Notification of Reports of Abuse of Children in Care	An assessment of ODHS' efforts, policies and practices regarding notifications and providing records about maltreatment in care as required under Oregon law.	N/A	Assessed annually for progress	ODHS shall develop and submit a proposed tool to the neutral by 11/15/25, with tool ready to pilot by 6/1/26.



Note: See Initial Review (pp. 16 – 17) for full measurement description.

Category 7: Core Strategies and Efforts Reporting

Measurement	Description	Ultimate Outcome	Timeline	Notes
#14: Core Strategies and Efforts Reporting	Efforts Report delineating and assessing the agency's efforts to substantially achieve the Measurements and Ultimate Outcomes	N/A	Assessed annually	ODHS will submit the Efforts Report to the Neutral on a semi-annual basis



Note: See Initial Review (p.18) for full measurement description.

Thank you.

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