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Settlement agreement ensures child care assistance is more accessible to NM families

FOR IMMEDIATE RELEASE

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ALBUQUERQUE, NM – Today, the New Mexico Early Childhood Education and Care Department (ECECD) and several New Mexican parents and OLE—a non-profit, grassroots member organization of working families—announced that they have come to a settlement agreement that will expand access to the state’s child care assistance program and require it to be more responsive to parents’ needs. The parents and OLE are represented by the New Mexico Center on Law and Poverty (NMCLP).

The settlement agreement resolves a 2018 lawsuit filed during the previous administration that alleged the New Mexico Children Youth and Families Department (CYFD), which then housed child care assistance services, was denying child care assistance to eligible families.

CYFD and plaintiffs began the process of addressing the issues raised in the lawsuit and entered into an initial settlement agreement in spring 2019. After Governor Michelle Lujan Grisham and the New Mexico State Legislature created the Early Childhood Education and Care Department in 2019, the Child Care Services Bureau was consolidated along with all other early childhood programs into the new department. ECECD became the responding agency to the lawsuit following the department’s official launch in July 2020 and has committed to working with NMCLP and OLE to fully address the issues identified in families’ lawsuit.

"This settlement reflects the child care system that parents are building with Secretary Groginsky for all New Mexicans," said Alma Martell, a parent leader from OLÉ. "It makes an early education more affordable to more parents and makes the process of getting state assistance to pay for preschool much easier, kinder, and more like what we expect of a high-quality early education system."

"It's clear that Secretary Groginsky and the department are committed to expanding access and making child care assistance work for New Mexican families," said Tim Davis, an attorney at the New Mexico Center on Law and Poverty. "The department has sought out and listened carefully to parents, and the improvements to the program reflect that collaboration and the reality of working families. The Department has made changes that are truly groundbreaking and acknowledge that quality affordable child care is a bridge to opportunity for families and their children."

"ECECD is committed to ensuring that every eligible family in New Mexico can receive child care assistance in a fair, equitable, and transparent manner," said ECECD Secretary Elizabeth Groginsky. "Access to high quality early childhood education is critical to the development of our young children and vital to the economic stability of our families. In the nine months since our department officially launched, we have worked to change regulations to make it easier for families to apply for assistance, waived all parent co-pays until July 2022, and continue to seek ways to expand eligibility for child care assistance for families in our state."

The terms outlined in the settlement agreement include:

- Maintaining eligibility for families with incomes at or below 250% of the federal poverty level unless the Department reduces eligibility through a rulemaking process with public input.
- By August 2021, or sooner, ECECD will ensure that participating families know when and why a change is made to their child care assistance case. Notices will also clearly explain why child care assistance is denied or terminated and will provide information on how to appeal the decision. ECECD has already taken major steps to comply with this requirement.
- By December 31, 2021, ECECD will make the final updates to its child care assistance regulations so families receive correct information about their benefits during the application process, which will increase access to child care with minimal administrative burdens.
- ECECD will train all staff on the changes and the changes to the notices, which has already begun and will continue as ECECD fulfills its obligations under the settlement.
- For three years, ECECD will hold meetings with participating families and follow up meetings with the plaintiffs to discuss the feedback, and any potential remedial next steps.
- ECECD will not be required to pay any attorney fees, so long as it remains compliant with the terms of the settlement.

The settlement agreement builds upon other recent important changes that ECECD made to the child care assistance program that expand access, including giving benefits to parents looking for work, streamlining income determinations, increasing eligibility to families with incomes up to 250% of the federal poverty level, ending the exclusion of graduate students, and no longer forcing parents to pursue child support from an absent parent in order to qualify for assistance.

Currently one-in-three New Mexican families qualify for free or reduced child care tuition through ECECD's child care assistance services. Families can learn about eligibility and apply for assistance at: <https://eligibility.ececd.state.nm.us/eligibility/public/home.page?dswid=-4195>

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**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

ANNETTE TORRES, ANNABEL TORRES,
LAUREN CAMBRA, MONICA BROSHIOUS,
CRISTELA CASTRO, SAMANTHA RIVERA-
all residents of New Mexico on behalf of themselves
and individuals similarly situated and
ORGANIZERS IN THE LAND OF
ENCHANTMENT, New Mexico membership based
organization, representing low-income families.

Plaintiffs,

vs.

No. D-101-CV-2018-02769

MONIQUE JACOBSON, in her official capacity as
Secretary of the New Mexico
Children, Youth and Families Department,

Defendant.

SECOND AMENDED STIPULATED ORDER

The Court, having been fully informed on this matter, hereby GRANTS the parties' Joint Motion to Enter Second Amended Stipulated Order. The Court hereby ORDERS that the Joint Second Amended Stipulated Order attached to the parties' joint motion is APPROVED. Having been advised of the agreement between the parties, the terms of which are stated herein, the Court FINDS:

I. Regulations

1) The Defendant will continue to provide the opportunity for eligible families seeking child-care assistance to receive benefits with incomes up to 200 percent of the federal poverty level until and unless the Department lawfully promulgates regulations to increase or decrease the eligibility threshold.

2) Defendant will continue to post on the Department's website and in each field office base co-payment rates and the calculation methodology used to determine the share of child care costs a family must pay.

3) No later than December 31, 2021, Defendant shall implement final regulations through the process required by the state rules act and CYFD act that codify all eligibility requirements and Department standards that impact individuals who are not employees of the Department, as required by the State Rules Act NMSA 1978, Sec. 14-4-1, *et seq.* Defendant will give Plaintiffs 30 days to review and comment on the proposed rules prior to publishing the Notice of Proposed Rulemaking. The proposed regulations shall include:

a) how the Department calculates monthly family income to determine child care assistance eligibility;

b) how the Department calculates the share of child care costs a family must pay, including base copayment levels and the methodology the Department uses for determining how the co-payments are discounted for families based on hours of care needed and the number of children receiving care.

4) Defendants will conspicuously post on their website the formulas for calculating client income and co-payments with example calculations for each and the verifications list attached to this Order as Exhibit A. By agreement, the parties may update the verifications list on the website at any time.

II. Notices of Action

1) No later than August 31, 2021, Defendant shall implement a standardized system of written notification in English and Spanish, including the child-care placement agreement. Eligibility notice shall meet the following requirements:

- a. State the Department's eligibility decision as to hours of care, share of costs a family must pay, and duration of assistance; and
- b. Provide the reason for a decision, if the individual is denied or not approved for full assistance; and
- c. Provide information about the individual's right to appeal, including the timeframe and method for doing so; and
- d. Provide the contact information for free legal services.

2) Defendant will continue to post posters in the Early Childhood offices that describe child-care application rights with the same information available and distributed as a flyer to applicants.

3) After completing the requirements in Sections 1 and 2, Defendant will train staff of the Early Childhood Education and Care Department on the changes made to regulations under this order by March 31, 2022 and on changes made to notices of action under this order by March 31, 2022. Defendant will provide training materials and recordings of trainings to Plaintiffs' Counsel. To the extent practicable, Defendant will provide training materials to Plaintiffs' Counsel in advance of the actual training.

III. Monitoring and Enforcement

1) Defendant will provide Plaintiff's Counsel with any proposed changes to notices of action and any proposed regulatory changes implemented pursuant to this Order at least 30 days prior to implementation to allow Plaintiffs' Counsel the opportunity to provide written comment and the opportunity to meet and confer.

2) Defendant shall notify Plaintiffs' Counsel when the Department believes it has complied with Section I and Section II. Plaintiffs' Counsel will notify the Department in writing

as to their position on compliance within thirty (30) days of being notified the Department believes it has met the requirements of Section I or II. If the parties agree that the requirements of Section I or II have been met, they shall file a joint notice to the Court. If the parties disagree as to compliance with Section I or II, they will meet and confer within two weeks of Plaintiffs' written notice of disagreement. Plaintiffs shall not withhold agreement as to compliance without good cause.

3) For three years following the administrative closure of this case, Defendant will hold quarterly meetings to solicit and document all feedback from families that participate in the Child Care Assistance Program. The meetings will be open to all families participating in the child care assistance program, held in-person (if possible, depending on public health orders) with a virtual access option, held at a time and location that is most accessible for families that participate in the program, after work hours if necessary, and will include interpretation services.

4) No more than thirty (30) days after the quarterly meeting, Defendant and Plaintiffs will meet to review and discuss the feedback received from families after each quarterly meeting and determine whether any feedback requires attention by the Defendant as agreed to by the parties.

5) The Court retains jurisdiction to hear and resolve any disputes relating to performance of the terms and conditions of this Second Amended Stipulated Order. Plaintiffs may file a motion to enforce this Order upon reaching an impasse in the meet and confer process or upon Defendant's refusal to meet and confer or hold the quarterly meetings as set forth in Section III. If Plaintiffs bring an action to enforce this Order within three years of the closure of this action and prevail, Defendants shall be liable for Plaintiffs' reasonable attorneys' fees and costs. This time limitation solely concerns the right to recover attorneys' fees under this Order and shall not be

interpreted to bar recovery of attorneys' fees in an action to enforce this Order under any other legal theory or cause of action.

6) Once the terms of this agreement have been fully implemented by Defendant, her agents or successors, the parties will jointly move for administrative closure of this case.

Accordingly, the Court ORDERS and CONCLUDES:

- 1) The Court ORDERS the parties to comply with the terms of the Order as set forth herein.

The Honorable Matthew J. Wilson
First Judicial District Court Judge

Respectfully submitted,

NM CENTER ON LAW AND POVERTY

By: /s/ Tim Davis

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