



FACT SHEET: *Wyatt B. v. Brown*

Plaintiffs: Wyatt B. and Noah F. by their next friend Michelle McAllister, Kylie R. and Alec R. by their next friend Kathleen Megill Streck, Unique L. by her next friend Annette Smith, Simon S. by his next friend Paul Aubry, Ruth T. by her next friend Michelle Bartov, Bernard C. by his next friend Ksen Murry, Naomi B. by her next friend Kathleen Megill Streck, and Norman N. by his next friend Tracy Gregg, individually and on behalf of all others similarly situated.

Defendants: Kate Brown, Governor of Oregon in her official capacity; Fairborz Pakseresht, Director, Oregon Department of Human Services in his official capacity; Marilyn Jones, Director, Child Welfare in her official capacity, and Oregon Department Of Human Services,

The lawsuit alleges that:

- Oregon fails to exercise sufficient oversight over its child welfare system and to take necessary steps to ensure that the DHS complies with federal law and constitutional rights of children.
- Oregon has assumed responsibility but failed to protect children by not providing necessary services nor placing them in safe homes and appropriate facilities.
- The result of these failures is that the Oregon foster care system devastates and permanently damages the children in its care.

Subclasses: This action is the first in the country to litigate on behalf of a set of specific populations in foster care combined into a single class action lawsuit:

- **General Class:** The estimated 8,000 children for whom DHS has or will have legal responsibility.
- **ADA subclass:** The more than 50% of the estimated number of foster children who have or will have physical, intellectual, cognitive, or mental health disabilities.
- **Aging Out subclass:** The estimated 900 foster children who are or will be 14 years old and older, who are eligible for transition services and lack an appropriate reunification or other permanency plan.
- **SGM (Sexual and Gender Minorities) subclass:** The estimated 400 foster children who identify as sexual or gender minorities, including lesbian, gay, bisexual, queer, transgender, intersex, two-spirit, gender non-conforming and non-binary children.

About the Oregon's foster care system:

- There are 8,000 children in Oregon's foster care system.
- Oregon's foster care system is so dysfunctional that Oregon cannot accurately track how bad its services are. The 2018 Secretary of State's audit described Oregon's foster care records as: "unreliable for our audit purposes" due to "uncertain and untested data integrity and accuracy, incompleteness, data entry errors and poor quality data conversion... ."
- Children who need to be placed in foster care experience frequent moves among many different homes and institutions, scattered throughout the state, increasing the trauma that these children have already suffered after being removed



from troubled home situations. Often, they are separated from their siblings during placement.

- DHS places children in inappropriate institutions, ships them out of state where they are placed in costly and questionable for-profit congregate programs that do not address their needs, or largely abandons them so they wind up in homeless shelters or on the streets.
- The Department of Human Services (DHS) fails to employ a minimally adequate number of caseworkers to provide appropriate care and services for children. In 2012, the department was staffed for only 68% of its caseload.
- Currently, approximately 70% of DHS's child welfare's workforce have been on the job for less than 18 months.
- In Oregon, just 20% of children in care had “permanency and stability in their living situations” and in only 49% of cases did DHS adequately address behavioral and mental health needs of children in care.
- Individual lawsuits against DHS have resulted in large damage awards for widespread violations of individual children's rights, at a resulting cost to the state of over \$39 million since 2006.
- DHS has almost doubled the number of children placed in out of state institutions in the last year.

The Plaintiffs: *The children's identities legally cannot be revealed. Using pseudonyms, these are the plaintiffs representing the class:*

Wyatt and Noah: Three-year-old Wyatt and one-year old Noah have been in DHS custody off and on since September 2018 due to allegations of domestic violence and drug abuse in their home. Wyatt was born with a congenital heart defect and takes medications three times a day. Despite having entered foster care with no special needs, other than Wyatt's medical condition, the children have moved constantly until they were finally separated, and Wyatt faces another move imminently

While the boys were placed in foster care together, there were at least two mix-ups concerning Wyatt's medication, with Wyatt's medications being given to Noah, a situation that has been described as “a potentially life-threatening mistake,” and by the DHS supervisor as “a total goof-up. The boys have now been separated.

The trauma of being removed from his mother and cycled through 12-14 homes has left Wyatt with significant behavioral issues, including fits where he flails, hits, kicks, screams and throws things. Noah has night terrors, screaming loudly in the middle of the night while appearing to remain asleep. His foster parent tries to soothe him until he awakens but the cycle begins again. Noah needs be held constantly and throws a tantrum if he is put down or if focus is moved away from him.

Kylie and Alec: Seven-year old Kylie and eight-year old Alec are sister and brother in DHS custody since late January 2019 after being removed from their mother due to allegations of neglect and substance abuse. Although the children have only been in foster care for two months, Kylie has already had five different placements and Alec has had four. Kylie has run away from two different foster homes to try to find her mother,



and has had worsening tantrums while in placement, though none of her foster parents have been told about the tantrums or given any help in dealing with them.

At one foster home, Kyle and Alec were were dropped off on a Friday afternoon and the foster parents were not even provided with their last name or their Oregon Health cards. Those foster parents took Kylie to a hospital, concerned she might hurt herself, but were unable to complete the intake process because they didn't know the children's last name and were unable to reach DHS.

The children entered foster care with a severe lice infestation in their hair but received no treatment for that because none of the foster parents had Oregon Health numbers and could not therefore get appropriate treatment for the lice. Kylie has finally been treated for lice six weeks after she entered foster care, when her shoulder length hair had to be shaved off, and now refers to herself as a boy. Kylie has been placed in a residential psychiatric center, separated from her brother, who is in a temporary foster home.

Unique: Unique is nine years old and has been in the custody of DHS for two and a half years. When Unique came into foster care, her mother experienced mental health issues, was verbally abusive to her children, and kept them out of school. Unique's step-father was sent to prison for sexually abusing Unique's sibling and it was suspected he also sexually abused Unique. Unique's mother has a long history with child welfare including having her parental rights terminated with respect to two older children.

Unique has changed placements a number of times and cycled through Jasper Mountain's SAFE Center, a short-term 30-90 day program designed to help stabilize residents. However, because of DHS' lack of therapeutic placements, Unique spent months at the SAFE Center well past her scheduled discharge dates.

In June 2017, Unique was finally moved to a therapeutic placement but when her behavior in her foster home began to decline, after visiting with her mother, the foster family notified DHS that they could no longer provide care for her. Although Unique's therapist informed DHS that her mother was unable to have Unique in her care, and because DHS did not have any therapeutic placements available, DHS returned Unique to her mother.

Shortly thereafter, Unique's mother locked her outside on the porch and left messages with multiple professionals involved in the case demanding that Unique be removed from her home. In one voicemail message, the mother stated: "...it's time for us to have someone come and intervene and get this little bitch out of my house, 'cause I'm fucking done now, she can't come back in, she's on the porch, she ain't allowed in my fucking house. All her shit is packed. . . .she gotta fucking go, she ain't sleeping in here tonight. So, unless I need to call 911, somebody needs to fucking come and get her." In a second voicemail message, Unique can be heard crying and screaming, "Mommy please don't do this."

Unique was placed at the SAFE Center for a 72-hour stay, then moved to a temporary foster home, before being placed in an OCP "Oregon Community Program" therapeutic foster home.



On July 17, 2018, Unique received a psychiatric assessment, with an assessment that “Placement in a BRS Treatment Foster Care home seems an appropriate level of care at this time to evaluate and stabilize her.” No such placement was found for her.

After Unique verbally and physically acted out and was destroying property. OCP requested an immediate discharge and Unique was again moved the SAFE Center for a short stay.

Between August 16, 2018 and October 23, 2018, Unique was placed at Albertina Kerr Sub-Acute facility in Portland, in a regular foster home in Veneta, and at least twice in the emergency department of a hospital. On September 27, Unique walked into the street, yelling obscenities. She also stated she did not want to be alive and tried multiple times to walk into traffic.

In October 2018, Unique was placed in Acadia Montana, a 108-bed Residential Treatment Center for young people ages 5-18 where the average the stay lasts three to six months. Unique has behavioral health outbursts that have resulted in her being placed in 4-person holds, 2-person holds, and seclusion by staff. In Oregon, these adverse responses by staff require a doctor’s order and can only be considered when all other options have been considered and found ineffective. Unique weighs approximately 90 pounds. She is also on multiple anti-psychotic and anti-convulsant medications.

No one from any child welfare agency has visited Unique since she was initially placed at Acadia Montana in October 2018, and DHS has no plan or timeline to bring Unique back to Oregon. Just last week, an Acadia facility in New Mexico was shut down to allegations that staff abused children in that facility.

Simon: Simon is a 13-year-old boy, who with his younger sister was first referred to DHS in 2010. To date, over 35 reports have been made to DHS about Simon, detailing physical abuse, sexual abuse, and neglect. Most of the complaints were screened out. He was initially placed in foster care for 10 months in 2012, but DHS returned him to his parents, despite his having accused his father of abusing him.

In 2015, Simon was removed from his home again, after several reports to DHS about his being abused by a relative, another student at the same school, and after repeatedly coming to school with feces in his clothes in order to try to ward off continuing abuse by this relative. However, rather than provide services and treat and protect Simon, DHS staff imposed “safety plan” restrictions on Simon’s presence in his family household, on the grounds that Simon could pose a threat of a sexual nature to his younger sister due to the abuse he had suffered. DHS maintained legal custody over Simon.

In December 2017, Simon was removed from the parents’ home and placed in a high-level therapeutic treatment center called SAFE Center at the Jasper Mountain facility in Springfield, Oregon. According to Jasper Mountain’s website, it is intended to be a 30-day to 90-day program. Simon remained at the program for 15 months.

Jasper Mountain determined Simon was ready for release in October 2018 because he no



longer required the high level of care they provided. In addition, the court issued an order that Simon be placed in a therapeutic placement close to home. However, DHS failed to locate an appropriate therapeutic foster home for him.

After a number of extensions, Jasper Mountain finally discharged Simon on March 8, 2019. Despite having known that his grandmother was willing to have Simon live with her as early as February 2019, DHS delayed certified her as a foster parent and he lived with her in a hotel on a “visit” for a week and then at her home for a week until he could be certified as a foster parent on March 20, 2019.

As of March 2019, Simon has been in either foster care or a therapeutic residential facility for a total of 38 months, in eight different settings, and removed from his home on three different occasions. Simon has been almost 5 years under DHS supervision and care and is currently living with his grandmother who has been certified as a foster parent.

Ruth: Fifteen-year-old Ruth and her younger brother entered foster care in spring 2017 after their mother died of an accidental overdose of drugs while Ruth was in the home.

DHS suspected Ruth had been sexually abused, she had grown up in a chaotic household, but did not have a psychological evaluation for six months after entering placement, despite DHS policy that require a child to be evaluated within 60 days after entering placement. They recommended long-term therapeutic foster care for her, but DHS did not implement the recommendations.

Ruth was placed with her grandmother but DHS removed Ruth from school because of her untreated mental health issues and she was instead given home-schooling through a web-based program. An evaluation in March 2018, recommended behavioral therapy for her but DHS did not implement the recommendations.

After Ruth reported that her maternal grandmother had hit her, she was sent first to a foster home, and then to Creekside, a refurbished delinquency facility in Douglas County. Creekside quickly decided that they could not keep her long term, set a deadline for DHS to pick her up, and advised: “She is very much spiraling out of control. . . .” “Ruth’s attorney was informed: “DHS has NO one and NO place at this moment who will agree to care for her.”

DHS has now placed Ruth in a residential facility in Iowa called Forest Ridge, where Ruth’s care costs DHS \$330.00 per day, **\$120,450 per year**. The program provides for Gender Responsive Services for adolescent girls in the juvenile justice system. Ruth has never been in the juvenile justice system.

Bernard: Fifteen-year-old Bernard first entered foster care at the age of three and was adopted with his sister by his great-grandparents in 2008. The children re-entered foster care in 2013, following the death of his great-grandparents, when Bernard was approximately 10 years old, after DHS received reports of physical abuse by Bernard’s mother, sexual abuse by his brother, and substance use and domestic violence in the home.



Bernard identifies as transgender and his permanency goal since placement has been Another Planned Permanent Living Arrangement or APPLA. APPLA is a plan for children in foster care that, on paper, is allowable only in the rare exceptions where states can make a compelling case as to why a child could never return home or be adopted.

Despite the fact that Bernard had identified as transgender, DHS placed him in an all-girls facility called Wildflowers through Whiteshield. In the past five years, Bernard has been placed in 12-15 different foster homes and more than seven residential facilities. He has experienced rejection from some short-term foster families because of his gender identity.

Bernard is currently placed at River Rock, a shelter facility in a section of the Douglas County juvenile detention center. The cells and furnishings in the dependency facility at River Rock are the same as those in the delinquency facility, children take daily cold showers and, at night, children are secured in old delinquency cells where the doors are closed remotely and simultaneously. The doors are locked preventing children from using the bathroom at night and are controlled from the delinquency control center.

In addition to placements and therapy, Bernard's education has been significantly disrupted. Currently, Bernard attends an alternative school for three hours per day which includes physical education, gardening and shop.

As a transgender male, Bernard has been taking prescription testosterone for over two years. His hormone injections should be administered weekly. In the month since he has been placed at River Rock, he has only had one testosterone injection. This may lead to the start of female puberty and shows a lack of regard for his gender identity. He has already started to experience hot flashes.

Bernard does not have any clothing except what has been provided by the facility which is "jailhouse" garb consisting of a sweatpants and t-shirts. Although he been provided with binders for his chest he only has been provided with two pairs of underwear.

Bernard has also not been receiving his anti-depressant medication while at River Rock. Bernard has a history of suicidal thoughts and engaging in self-harming behaviors such as cutting when he is depressed. He has not received appropriate therapeutic support since he was placed at River Rock.

Bernard currently struggles with living in a rural, less tolerant environment, as well as in an institution where he has been harassed due to his gender identity. Placement disruptions have also led to delays in Bernard getting gender conforming surgery.

Naomi: Naomi is 16 years old and has been in the custody of DHS since November 2018 when she presented at the emergency room at Good Samaritan Hospital with threats of suicide. Naomi was never officially admitted into the hospital although she remained in the emergency room for six days. The hospital recommended that she be placed in foster care.

When DHS was unable to locate a placement, Naomi's father gave DHS permission to place Naomi at the Jackson Street youth shelter, a homeless shelter which DHS



contracts with for placements. Naomi stayed there for approximately 15 days and did not receive any mental health treatment.

On December 13, 2018, DHS moved Naomi to Creekside, a refurbished police department headquarters. Naomi ran away and was picked up by the local police, then replaced at the Jackson Street youth shelter for another four days. During all this time, she received no mental health treatment or services.

Naomi was placed in a foster home that disrupted after ten days, and because they had no other placement options DHS placed her back at the Jackson Street youth shelter. She ran away, was found in Idaho, where she had gone in an attempt to live with her mother, and then returned to Oregon.

On January 16, 2018, Naomi was returned to Jackson Street for the sixth time and then placed in the the Youth Inspiration Program (“YIP”) in Klamath Falls, Oregon. YIP is a delinquency facility designed as, “the most intensive service for girls at risk of going to the state youth correctional facilities” and described as, “the last step before the big jail for them, a youth correctional facility.” DHS contracts with YIP to place foster children in extra beds. The foster children placed there, like Naomi, share an exercise yard with the other juvenile delinquency facilities. The outdoor exercise yard is approximately 30 feet by 30 feet, entirely concrete, and enclosed by a 20-foot-tall chain-link fence with quills of barbed wire along the top. They also share an indoor exercise yard, approximately the size of a racquetball court.

The YIP only allows the girls to complete approximately one-and-a-half to two-and-a-half hours of online schooling daily and uses behavioral interventions. If the girls exhibit “good behavior” they are allowed to wear dresses on Fridays and will be supplied with tampons during their monthly cycles. Otherwise, they are required to use sanitary napkins.

Naomi was required to attend daily group substance abuse therapy sessions, despite the fact that she did not have a substance problem, as well as sex abuse sessions, despite not having been sexually abused. While she received one hour of weekly individual therapy it was insufficient to address the issues that she presents with.

Naomi has not only been prescribed with Trazadone and Zoloft but recently with the psychotropic Risperdal as well . Risperdal was not prescribed by a psychiatrist but by a ”qualified mental health provider.”

At the beginning of April, after complaining to her lawyer about the conditions at YIP, Naomi was removed from YIP and is now back at the Jackson Street shelter, for the seventh time.

Norman: Norman is 17 years old and has been in and out of the custody of DHS for 14 years. Norman is currently placed at St. Mary’s Home for Boys (“St. Mary’s”) where he has been for the past ten months.

Norman was initially removed from his home when he was two and a half years old due



to his parents' drug use and his father's verbal abuse. Norman has been returned to his father's sole care at least five times. He identifies as being a member of the Pokagon Band of Potawatomi.

Access to necessary and recommended therapeutic treatment has been interrupted regularly by a constant revolving door of placements and lack of assistive learning services.

Some of Norman's experiences in foster care placement have included:

After Norman's final removal from his father in 2012, he was placed in a foster home with his two younger siblings who had never been in foster care before. Norman felt very protective of them and did not trust the strangers that were now responsible for their care. Scared, Norman had a behavior outburst and was removed from the foster home and separated from his brothers.

During institutional placement through Christian Community Placement Center ("CCPC"), Norman was supposed to be permitted to visit with his mother every Tuesday. However, he was denied these visits with his mother if he hadn't showered, cleaned his room, woke up on time, or otherwise followed the strict rules at this facility.

Norman was also placed out of state in Idaho in September of 2017, in a program he describes as chaotic and unstructured. Children often fought and staff would not intervene. Staff routinely placed children in restraints after tackling them and taking them forcibly to the ground. Staff would also drag youth into locked seclusion rooms.

Norman's permanency goal is also Another Permanent Plan Living Arrangement "APPLA." DHS has recently begun planning with Norman's mother as a discharge resource when he turns 18. While Norman and his mother are both hopeful that this plan will be successful, Norman must also be provided the appropriate skills and resources, which he has not received to date, necessary to survive on his own when he leaves foster care through case planning appropriate to meet the health care, educational, employment, housing, and other social needs that he needs when he ages out.