

## Oregon officials want to seal off much of federal child welfare lawsuit from public view

By Hillary Borrud | Posted Aug 22, 2019



A Department of Human Services branch in Portland, Oregon, is shown in this 2019 file photo.

Lawyers for Gov. Kate Brown and Oregon child welfare officials want a federal judge to seal all court records with specific information about 10 foster children, who are suing the state for allegedly violating their rights under the U.S. Constitution.

That would likely shut off the public from learning specific information about how the state treated the children, who ranged in age from 18 months to 17 years old when the federal lawsuit was filed in April.

Lawyers for the children signed onto an Aug. 15 stipulated protective order to seal much of the case, in order to get the state to begin handing over the children's files. However, they disagreed with the extent of the secrecy and in a letter filed Wednesday, both sides laid out their arguments for what the public should and shouldn't see.

In a letter filed Wednesday, Attorney General Ellen Rosenblum and private attorneys hired by the state argue that any information derived from the children's files should be seen only by the lawyers and the court in order to avoid exposing "histories of familial disruption, sexual violence, personal injury, medical and mental treatment, and substance abuse."

"Even if plaintiffs assert they have a right to disclose anonymized information about themselves in public filings, they do not have the right to do so on behalf of family members and other participants in (Department of Human Services) services, which is a likely result of publicly disclosing information about minors in protective custody," the state's lawyers wrote.

Attorneys for the children, who are identified by pseudonyms, agreed that any information that would identify the children, their families or foster parents should be protected.

But the children's lawyers argued that sealing any information "derived" from their confidential case files "would effectively block (their) stories from public view and enable (the state) to conduct a largely secret trial on a matter of significant public import." They also say the current arrangement gives the state overly broad discretion to keep other information about the children's care sealed from the public.

"The countervailing issue is the public's right to know how a major government system, the Oregon Department of Human Services, is operating, and how this public system's actions and inactions affect the lives of the system's wards," the plaintiffs' lawyers wrote.

The lawyers also pointed out that in a June hearing with lawmakers, Oregon's interim child welfare director Jana McClellan presented the same type of information derived from confidential case files which the state now wants to keep sealed from the public in the federal case. In response, the state's lawyers said McClellan's discussion of three foster children placed at out-of-state programs was not a valid example because McClellan did not share information that could allow the public to identify the children, such as their ages, races or diagnoses.

The children's lawyers, who are from the New York City-based nonprofit A Better Childhood and Disability Rights Oregon, are asking the court to force Oregon to make a long list of improvements to the child welfare system that they say would bring the state into compliance with the Constitution and federal laws. Examples include requiring thorough assessments of children within 30 days of the state taking custody and hiring enough child welfare caseworkers to limit caseloads to 15 children.

To illustrate how Oregon's child welfare system has failed children, the lawyers described their stories in detail in the initial lawsuit filing:

- A 9-year-old girl who was sent to a program in Montana where she has allegedly been drugged to "induce calming effects," and physically restrained by up to four staff at a time.
- A 3-year-old who was given his 18-month-old brother's heart medication, as the two were moved between multiple foster homes. When the baby was hospitalized, child welfare workers allegedly cancelled the boys' visit with their biological mother without telling her what happened.

- A 17-year-old Native American boy who has lived in at least 50 different foster placements, none with tribal members, and is about to age out of the system without a stable living arrangement
- A 15-year-old transgender boy who the state has failed to find a supportive home and at one point, sent to an all-girls program.

Under the current arrangement, such details would likely be sealed from public view going forward.

Asked on Thursday for her perspective on why it's necessary to seal so much of the case, the governor declined to weigh in.

"I don't have enough information to respond to your question," said Brown, who in the past worked as a lawyer for children and parents in the child welfare system. "And as you know, I do not comment on ongoing litigation."