

New Hampshire Youth Development Center Claims Administration and Settlement Fund

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Presentation to Senate Finance for April 28, 2025 A Framework for Overall Expeditious Settlement of YDC Claims

The Settlement Fund statute, RSA 21-M:11-a, falls within the rubric of functions of the Department of Justice. The Fund itself has two administrators with distinct responsibilities who collaborate in certain areas as the statute anticipates.

One is the attorney general, who shall administer the Fund and use the funds for the purpose of administering claims of former YDC residents as defined by statute (Fund administrator). 21-M:11-a, II.

The other is an independent, neutral lawyer appointed by the NH Supreme Court to serve as claims administrator, whose primary role in the settlement process is to process claims and may settle claims at such amounts as may be agreed upon between the attorney general designee and each claimant, or at amounts which are determined by the administrator through a resolution proceeding (Claims administrator). 21-M:11-a, III. Settlements must give due consideration to the guidelines developed by stakeholders and adopted by the joint fiscal committee. 21-M:11-a, III, IV.

The Claims administrator's primary charge is to oversee all phases of claims processing, ultimately settling hundreds of claims, in accord with the system designed by key stakeholders and approved by the Legislature. The original statute placed upon the Claims administrator the responsibility of public transparency through submission of a report to government leaders each quarter, in consultation with the attorney general. 21-M:11-a, XVI. *Quarterly reports are posted on the YDC claims administration website.*

The original statute was substantially amended in June 2024. Some changes related to categories eligible abuse and award caps. 21-M:11-a, V. Other changes expanded the Claims administrator's discretion and Fund monitoring responsibilities (further discussed below). 21-M:11-a, XII, XIII.

Now, after serving more than two years as Claims administrator, I have a series of observations that may be helpful to government leaders to understand when determining whether to invest further appropriations for the YDC Settlement Fund.

The Legislature enacted RSA 21-M:11-a as a settlement vehicle for acknowledged liability for abuse committed on juveniles by or at the behest of state employees. We refer to this as the administrative claims process, as an alternative to litigation in court.

Claims of abuse with court cases pending in trial court, and those without any court cases yet filed in trial court, have been filed in the YDC administrative claims process since the process began on January 1, 2023. The statute was amended in 2024 to extend the filing period through June 30, 2025.

So far, about 55% of pending claims fall into the category of prior litigation, and the individual claimants were required to stay (or pause) litigation in order to pursue settlement opportunity in the administrative claims process. However, individual claimants do have the option of withdrawing from the claims process prior to receiving and accepting an award offer.

- In 2023, stakeholders were getting accustomed to the administrative process, with all the process requirements set out by statute, as well as the forms and guides approved by the Joint Fiscal Committee after input from various stakeholders. Claims were settled through direct negotiations with the Attorney General's Office and through resolution proceeding hearings with the Claims administrator.
- In 2024, stakeholders continued participating in the administrative claims process, and also navigated legislative amendments to improve the likelihood of success for settlement by statute. In June, the Legislature approved the amendments and the summertime included work to revise claim forms and guides. By the fall, pending claims were relaunched into the revised process, and new claims continued to be filed.
- In 2025, claims filings have substantially increased. Review for eligibility, verification of claims, and fraud analysis continues. Once the claim filing period ends on June 30, 2025, stakeholders can be singularly focused with attention on a closed universe of filed claims – rather than adjusting to 2024 legislative changes and working to file new claims before the deadline. This should make a difference with efficiencies for all.
- Moving forward through 2025, adjustments to the claims and resolution process should be discussed and agreed upon by key stakeholders. Key stakeholders could seriously consider a trauma-informed mediation unit to bridge the gap between a claimant's request for an award and the responsive position of the Attorney General's Office. Claims administration is well situated to efficiently build and manage this option for resolution, if that is a direction desired by stakeholders.

At Present

The Legislature permitted two and a half years for filing claims. By statute, the filing period concludes on June 30, 2025, and receiving submissions for notice of claims as allowed by statute extends through August 29, 2025.

As of the close of March 31, 2025 (2025 Q1):

- a total of 1,135 claims have been filed, with 808 currently pending
- individual claimants are represented by a collection of about 30 different law firms
- about 40 pending claims are individual claimants who are not represented by lawyers
- about 162 of pending claims are individual claimants who currently reside at a department of corrections facility

In the event that appropriations for the Settlement Fund no longer involve YDC claims administration, then government leaders should consider a concrete plan forward for the body of pending claims and claims to be filed. If funding discontinues, or is limited, we will do all we are able, in consultation with the Attorney General's Office, until appropriated funds are exhausted.

Pathway to Overall Resolution

Here is what I see as plausible collective solutions, and far less costly than resolving state liability in the court system:

1. Continue with resolution proceeding hearings under oath with hearing teams that include trauma experts, and then an evaluation by the claims administrator or assistant claims administrator to verify claims and issue awards if appropriate.
2. Create a fast-track pathway for resolution such as through direct negotiations with the Attorney General's Office based on written submissions evaluation, as a potential addition to current stipulated

agreement resolutions. This could focus certain types of abuse or claim value, such as other abuse only claims.

3. Retain a mediator for claims where the parties identify as needing it, as a new pathway. This may be appropriate, for instance, for higher valuation amount claims where the parties dispute eligibility or dispute how guidelines aggravators and mitigators apply to the agreed-upon facts.

For all paths, a private meeting with the Claims administrator should remain an option for individual claimants once a claim is finally resolved. I have seen over and over the critical importance of allowing individuals who are recovering from abuse the opportunity to have closure by sharing what happened to them in person.

For success, meaningful and stable appropriations are required so that each resolution pathway can move forward predictably and efficiently within each fiscal year. The attorney general as Fund administrator can monitor funding with assistance from department of administrative services and others where needed.

The current statute provides all the tools needed to succeed, though some limited amendments will be needed. Ultimately, the direction is up to government leaders.

Observations for Change

For collective solutions to work, changes to the current settlement ecosystem are needed.

First, some stakeholders seem discontent with the current areas of discretion granted to the Claims administrator by statute: awarding legal fees and assessing first year payments for awards to claimants. Confidence in the settlement process is critical to success in a settlement atmosphere. If the Legislature would like to change the statute, then it should do so for the good of the settlement system.

Second, the ever-evolving scope of the Claims administrator's duties and responsibilities under the statute have been expanded and without collaboration in advance. Some areas appear to be unworkable and inefficient in the current climate, and ultimately detract from the Claims administrator's primary charge. Here are examples:

- Monitoring the Fund along all fiscal years impacted by installment award payouts
- Identifying shortfalls in appropriations and participating in state budgeting and incremental fiscal requests

To be focused on my primary charge, other ancillary functions – while obviously very important to Fund administration – should be dispersed and/or managed with responsibility by state agencies (department of justice and department of administrative services).

Third, any kind of successful settlement anticipates the parties' participation with good will and good faith and a collaborative demeanor. Behavior, language, posturing, and strategies that may be appropriate in a litigation context, are not a winning demeanor in a settlement process. Unfortunately, for the more than two years since the process began, a litigious style continues to permeate the administrative claims process by some participants, though not all. The administrative claims process is a conciliatory process and not litigation as we know.

- While all avenues of pursuing and defending legal rights are available to the stakeholders, years of diligent pursuit may inhibit focused and conciliatory participation in a settlement environment.
- It might be time for all stakeholders to consider a refreshed approach on how to staff their participation in the administrative settlement process, vs., staffing the work of litigation and appeals.

Finally, stable and predictable funding is a cornerstone to success. My operations depend on excellent consultants. The current contracts for several conclude on June 30, 2025, and they may or may not be willing to sign on again given the existing and enormous financial uncertainties. My operations depend on excellent

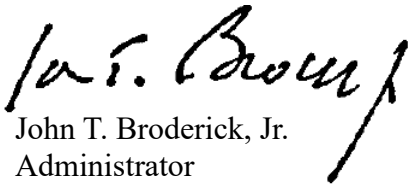
employees, whose families rely on them, and they may or may not be willing to remain with this already exceedingly difficult project. The Judicial Branch also needs to have certainty of the Fund to take on the reimbursement risk. *We have provided our next projected biennium budget to the attorney general as the Fund administrator, as has been the required practice from the outset, and are awaiting his response.*

As for the claimants, the filing period deadline is June 30 of this year, and there are hundreds of pending claims. My experience, as well as the attorney general's public comments, leaves absolutely no room for doubt that horrific abuse was committed on children in state's care, by or at the behest of state employees, for decades. The public transparency provision under the Fund statute calls on me to provide information as to the number and nature of claims made and settled, while of course doing so in a manner that preserves the solemnity of each claimant's confidentiality. This has been very data-centric reporting so far, and we should not forget the human component of this project. Meanwhile, in the current fiscal climate government leaders are placing on my plate the notion that projections are needed to justify further funding of this project. To spend time doing so, in my opinion, would be a waste of resources at this point. The financial need was promised and otherwise is obvious at this juncture. The appropriate time for meaningful projections for state liability is when the universe of claim filings is complete later this year.

I remain optimistic that overall settlement for the State of New Hampshire and hundreds of individual claimants is more than a mere possibility. I am convinced that prudent investment of state monies for the YDC Settlement Fund is worth it – so long as thoughtful and professional collaboration among all parties is put into practice as the most efficient path forward.

I was appointed in 2022 to carry out the complex and sensitive task of assisting the state and claimants to reach resolution in an efficient, trauma informed, victim-centered manner. I remain committed to see it through.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John T. Broderick, Jr.", with a stylized flourish at the end.

John T. Broderick, Jr.
Administrator
New Hampshire Youth Development Center
Claims Administration and Settlement Fund

Date: April 24, 2025