

## Judge OKs class-action lawsuit alleging Oregon foster care dysfunction



By [Dirk VanderHart](#) (OPB)

Aug. 19, 2022 4:16 p.m.

### **Plaintiffs say Oregon's child welfare system is in disarray and must better protect youth under state care.**

Plaintiffs alleging widespread dysfunction within Oregon's foster care system can now sue on behalf of all children within that system, a judge ruled this week.

With that decision by U.S. District Court Judge Ann Aiken, [a three-year-old lawsuit against the state](#) can potentially achieve a greater impact on a system that plaintiffs say struggles to place children in adequate facilities, doesn't set kids up to live alone once they age out of the system and frequently traumatizes thousands of youth in state custody.

Aiken's ruling, over the objection of state attorneys, means that the suit can proceed as a class action. Rather than merely seeking remedies for 10 current or former foster children named in the initial filing, the suit now represents a general class including every child who is or eventually will be, in state care.

Aiken also certified three "subclasses" of that group: youth who are aging out of the system, who are disabled, or who are LGBTQ. Children in those categories have been subjected to unique harms, the plaintiffs argue, and should be treated separately.

For each of those classes to be certified, the plaintiffs' attorneys had to show that the claims made by the 10 named defendants were likely to apply to a wide range of children in foster care and that actions to remedy those harms would also help the greater group.

"The Court concludes that Plaintiff has shown that the injuries claimed by the named Plaintiffs are certain to recur on other similarly situated individuals," Aiken wrote in her ruling.

The lawsuit was filed in 2019 by Disability Rights Oregon, the nonprofit A Better Childhood and attorneys at the firm Davis Wright Tremaine. Named as defendants are Gov. Kate Brown, Director of the Oregon Department of Human Services Fariborz Pakseresht, Director of Child Welfare Marilyn Jones and the Oregon Department of Human Services.

The [suit alleges](#) that Oregon has failed children in its care for years, employing too few caseworkers, identifying too few facilities or homes where children may stay, providing

inadequate training for care providers, and not properly evaluating the needs of foster kids, among other problems.

The suit includes [detailed narratives](#) of the 10 named defendants, offering a picture of a system in which kids are separated from siblings, denied necessary medications, frequently moved between homes and facilities, and generally unable to access care specific to their needs.

“What we’re seeking to do is make the system better and make it better for kids,” said Marcia Lowry, an attorney and executive director of A Better Childhood. “This case was filed in 2019 and kids are still suffering in Oregon.”

Lowry’s organization has worked to improve foster care conditions in more than a dozen states. She told OPB it has rarely encountered as aggressive a defense as that by the state of Oregon.

“One of the things that’s unfortunate here is that this is a dysfunctional system, this is a harmful system, and the state has been spending a huge amount of money to defend this,” Lowry said.

Oregon has made some changes to its foster care system since the lawsuit was first filed, such as [a 2020 decision to bring back youth](#) who had been sent for care in other states. But foster youth advocates say Oregon still has more work to do.

The Oregon Department of Justice declined to comment on the pending litigation Friday. The agency paid attorneys with law firm Markowitz Herbold more than \$11 million for representation in the case through May, a spokeswoman said.