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Hawaii News

Lone legislator snuffs foster care settlement

By [Susan Essoyan](#)

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House Finance Chairwoman Sylvia Luke's decision to cut the funds was made without public input, but she explained her reasoning in a recent interview after the legislative session ended.

After years of legal wrangling, the state and advocates for foster parents thought they had a deal to help cover the cost of caring for foster children — but one state lawmaker torpedoed the settlement.

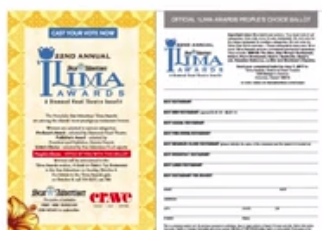
The U.S. District Court had given preliminary approval and letters had been sent to 6,000 families about the proposed lawsuit settlement, which would raise the rates that foster parents are paid to care for abused and neglected children.

Such legal settlements are subject to funding by the Legislature, but they are seldom nixed so late in the game. Now the issue is likely headed back to court and could cost the state far more, according to attorneys who sued the state, claiming it was violating federal law by not covering the cost of foster care.

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"We were definitely surprised," said plaintiffs' attorney Claire Wong Black, especially since the settlement "was negotiated with the assistance of the court and had the approval not only of the Department of Human Services and the Attorney General's Office but also the governor."

House Finance Chairwoman Sylvia Luke's decision to cut the funds was made without public input, but she explained her reasoning in a recent interview after the legislative session ended. She said she objected to paying \$1.1 million in attorneys' fees and she wasn't sure the state could afford the higher rates. She also resented the court system meddling in what she sees as a legislative prerogative.

"The concern that I had is this was really about paying lawyers as about trying to fund programs," Luke said. "If we are providing funds for programs, should one program take precedence over the other just because we have a lawsuit?"

She added, "We had told the Attorney General's Office, what needs to be made clear to the court is that programs cannot be set, the monetary amounts cannot be set through the judiciary."

As a condition of receiving federal reimbursement, the law requires the state to set rates to fully cover the cost of providing foster care to children who are removed from their homes. That includes food, shelter, clothing, school supplies and other costs.

The class-action suit was filed in 2014 and settled last year on the eve of trial after extensive testimony by experts on both sides. The \$1.1 million in attorneys' fees was a

big discount from the \$2.9 million in costs incurred by the three law firms representing the plaintiffs.

"I understand about her concern about attorneys' fees," said Black, who is with Allston Hunt Floyd & Ing. "The simple solution is for the state to follow its obligations under the law. If they are complaining about the fact that this dragged on so long and incurred fees, that is a direct result of the state's behavior."

In response to Luke's concern about judicial overreach, Black said: "The courts cannot usurp the legislative function. What they can do is require the state to comply with their obligations under federal law, and when that implicates their funding, then it is well within their purview."

The other firms on the case were the Hawaii Appleseed Center for Law and Economic Justice, and Morrison & Foerster of Palo Alto, Calif.

The suit, Patricia Sheehey et al v. Patricia MacManaman, was filed after years of fruitless advocacy to get the foster board rate raised. For 24 years, the rate in Hawaii was fixed at \$529 a month. If it had kept pace with inflation, the rate would have nearly doubled to \$950 a month over those years, according to the plaintiffs.

Not long after the suit was filed, the state boosted rates to a range of \$576 to \$676 a month depending on the child's age. Luke said she thought that would be the end of it. But the lawsuit continued because advocates felt the amounts still fell short of what was required under the law.

The settlement would have pushed the monthly rates to \$649 to \$776 per child, and increased the annual clothing allowance. It called for an additional \$4.5 million in state funds and \$2.4 million in federal funds in each of the next two years.

The agreement also called for the state to regularly review rates and assure they were adequate, as is required under federal law.

"That part of the settlement was really important to the foster families — that the state was going to be bound to look at cost-of-living increases," Black said. "They could not turn a blind eye any more."

The settlement agreement does not expire until the end of June, according to Joshua Wisch, special assistant to the attorney general. He said the court has been notified that the agreement was not funded.

A related lawsuit filed in state court was settled for \$2.3 million in back pay to foster parents, but those funds were cut by the Legislature as well. Black said that was a fraction of what was owed, and "if we pursue that state lawsuit for back pay, you are talking multiples" of that figure.

Although the Legislature refused to fund the foster care settlement, it added \$5 million to the attorney general's budget for litigation. Sen. Jill Tokuda, then-Ways and Means chairwoman, said that would put people on notice.

"We need to make sure that the attorney general takes very seriously those claims that come against us, which is why we did put \$5 million more into the litigation fund so that people realize that if they challenge us, even those that are frivolous, that we will take that seriously," Tokuda said.

Sherry Campagna, a foster mother who was a plaintiff in the state lawsuit, said vulnerable children ultimately will suffer unless foster care rates are raised because many good parents won't take in needy kids without adequate compensation.

"When I meet great families and I try to recruit them as foster parents, they won't do it after they see the numbers," said Campagna, who waived any personal claims as part of the settlement.

The Campagnas have four children aged 2 to 16 — including foster, adopted and biological kids.

"We believe every kid deserves at least a temporary respite from the craziness of the lives that they are subjected to," she said. "Unfortunately the state now has a very large bill to pay to support our most vulnerable children. They should do the right thing and pay their bills."

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