A Guide for State Court Judges and Lawyers on Special Immigrant Juvenile Status

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When Daniel1 was six years old, his mother came to the United States from El Salvador and left him in her sister’s care. She sent for Daniel the following year, but Daniel and an older relative were stopped in Mexico and sent back. Because there had been no contact with his father for years, Daniel lived with his aunt and her family for the next six years. During that time, his aunt and cousin often hit Daniel and at times denied him food. Eventually, Daniel started sleeping at a local church rather than face his relatives. When Daniel’s mother learned of the mistreatment, she sent for Daniel. Daniel reunited with his mother in the U.S. and began to thrive.

Once in the U.S., Daniel sought and was granted Special Immigrant Juvenile Status (SIJS), a classification under federal law that allowed him to seek a “green card,” that is, adjustment of his status to lawful permanent residence. Though these designations and determinations are made by the federal government, the first step in Daniel’s process toward authorized immigration status was in a state family court.

This article describes the role of state courts and legal practitioners in a young person’s journey toward gaining SIJS.

Like Daniel, thousands of children and youth arrive in the U.S. each year unaccompanied by a parent or legal guardian.2 The number has increased dramatically in recent years. Almost 59,700 unaccompanied children arrived in federal fiscal year 2016; about 17,500 traveled to the U.S. from El Salvador, and over 41,000 came from Guatemala, Honduras and Mexico combined.3 These numbers could approach the “surge” of unaccompanied children entering through the southwestern border in 2014, when over 67,000 children arrived from those four countries.

Some children and youth travel to the U.S. to escape abuse and other mistreatment in their homes. Many are fleeing rampant gang and cartel violence in their communities. Extreme poverty and government corruption or instability also motivate youth to attempt to enter the U.S. for protection, reconnection with parents or other relatives, education, and other opportunities.4

Children and youth who arrive in the U.S. without a parent or legal guardian lack authorized immigration status. These youth are not able to work legally, be eligible for federal benefits including federal financial aid, access many state or local benefits, or enjoy a sense of stability and certainty about their lives. Some of these youth may be able, like Daniel, to adjust their status through forms of humanitarian immigration relief.

One form of humanitarian relief is SIJS. SIJS is available to eligible

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Frozen Pre-Embryos Classified as Marital Property of a Special Character and Awarded Jointly to Divorced Couple

McQueen v. Gadberry, 2016 WL 6777902 (Mo. Ct. App.).

The Missouri Court of Appeals affirmed finding jointly awarding frozen pre-embryos in divorce proceedings because there were conflicting constitutional rights and frozen pre-embryos are not “children.” The conflicting constitutional rights were the husband’s right not to procreate, the wife’s right to procreate, and both parties’ right to be free from governmental interference with his or her procreative decisions.

McQueen and Gadberry decided to create pre-embryos through in vitro fertilization (IVF) because of concerns about McQueen’s age and Gadberry’s upcoming deployment. The decision was not based on infertility concerns but rather geographical separation. While Gadberry was stationed in another state they created four pre-embryos via IVF. During this process both parties agree there was no agreement about their intentions for the pre-embryos or discussion about how many children they wanted.

Two of the four pre-embryos were implanted in McQueen, who gave birth to twins after a successful pregnancy. The remaining two frozen pre-embryos were stored at a cryobank facility in St. Louis until the facility closed and the frozen pre-embryos were transferred to a different facility in Virginia. To facilitate this transfer, the couple had to complete a set of documents including a “Directive Regarding the Disposition of Embryos.” Gadberry and McQueen separated shortly after executing these documents and divorced three years later. The remaining two frozen pre-embryos were the reason for this case.

The lower court found the frozen pre-embryos were marital property of a special character and awarded them to McQueen and Gadberry jointly. The lower court specified “no transfer, release, or use of the frozen [pre-]embryos shall occur without the signed authorization of both [Gadberry] and [McQueen].” This decision was based on the parties’ fundamental constitutional right to privacy and equal protection under the 14th Amendment. McQueen appealed the decision arguing the frozen pre-embryos should have been classified as children not as marital property of a special character, and if appropriately characterized as marital property the court should not have awarded them jointly.

The appeals court found the frozen pre-embryos were appropriately classified as marital property of a special character. McQueen argued they should have been classified as children based on a state statute (Mo. Ann. Stat. § 1.205) declaring that, inter alia, life begins at conception and applies to frozen pre-embryos. Gadberry argued applying § 1.205 would violate his constitutional right to privacy, right to be free from governmental interference, and right not to procreate. The appeals court agreed with Gadberry.

The court examined statutory definitions of “unborn child” and “conception” and applied decisions from previous cases. Previous decisions used § 1.205 for purposes of applying criminal and civil liability against third parties for causing the death of an unborn fetus in utero. The court held that § 1.205 cannot be read in a vacuum and must be read to consider constitutional rights given by the U.S. Supreme Court. Because in this case the frozen pre-embryos are in vitro, classifying them as marital property does not run afoul of Roe v. Wade, which would give greater weight to a woman’s constitutional rights to procreate if she were pregnant. The U.S. Supreme Court has held that a citizen’s fundamental, individual right...
to procreational autonomy is inherent in the U.S. Constitution’s concept of personal liberty. Meaning, Gadberry and McQueen both have the right to be free from governmental interference with their procreational decisions.

Gadberry did not want to potentially have any more children with McQueen, they already had two children and had parenting issues with those children. The court held “although McQueen has a right to procreate, that does not mean she has a right to procreate with Gadberry by implanting the frozen pre-embryos which contain his genetic materials.” McQueen’s right to procreate is not limited by this decision because she has the ability to procreate and could do so with another man. Additionally, this decision protects both their rights to not have unwarranted governmental intrusion, allowing them to make the intimate decision about having more children. For these reasons, the appeals court agreed with the classification of the frozen pre-embryos as martial property of a special character.

During trial, the court appointed a GAL who was present at trial and briefly questioned McQueen but did not submit recommendations or question Gadberry. McQueen argued the lower court should have required the GAL to advocate for the frozen pre-embryos best interests. To succeed on this argument the court would have had to classify the frozen pre-embryos as “children.” Because the court did not re-classify the pre-embryos as children, this argument lacked merit.

McQueen argued the trial court should have not awarded the frozen pre-embryos to the parties jointly because the directive signed with the transfer documents was an enforceable agreement making them separate property for McQueen, and, if they were not separate property, the court was required to divide the property. Property is assumed to be marital property unless there is evidence the property is separate. McQueen argued the signed directive as part of the transfer documents was evidence the parties intended McQueen to get the frozen pre-embryos if divorce occurred. The signed directive had dates that did not line up, handwriting in several different colors of ink, and testimony that did not create an enforceable agreement making the frozen pre-embryos separate property for McQueen; the appeals court agreed.

Trial courts are required by Missouri statute (452.330.1) to divide marital property; however, several decisions from the appeals court do not prohibit a court from awarding property jointly in unusual circumstances when the property cannot be divided justly. In this case, the conflicting constitutional rights and lack of enforceable agreement between the parties supported the lower court’s award as joint property.

One judge dissented because he interpreted Missouri law to mean the two embryos at issue were human beings with protectable interests in life, health, and well-being because conception is defined as fertilization in the ovum of a female by a sperm of a male. Because of this legal interpretation, the judge would have classified the frozen pre-embryos as children.

**Court Allows Claim for Maximum Caseload Requirements to Continue**

*Price v. Indiana Dep’t of Child Servs., 2016 WL 6235628 (Ind. Ct. App.).*

**Indiana statute imposes maximum caseload requirements for family case managers. The Court of Appeals of Indiana allowed an action for mandating the Department of Child Services (DCS) to comply with this statutory requirement through the public standing doctrine. The court found the statute imposed a clear duty on DCS and a mandate was appropriate because there were no other adequate remedies.**

Indiana Code § 31-25-2-5 requires the Department of Child Services (DCS) to ensure that family case managers’ caseloads are no greater than 12 active cases with initial assessments or 17 children monitored and supervised in active cases. Section 31-25-2-10 also requires DCS to have sufficient qualified and trained staff to comply with the prescribed maximum caseload ratios.

Price was employed at DCS as a permanency worker. By statute, Price’s caseload should have been limited to no more than 17 children. However, when she filed her complaint, Price had approximately 43 children on her caseload. Price’s complaint asked the court to mandate DCS to take steps to comply with the statutory maximum caseload requirements. DCS had previously identified in its 2014 Annual Report to the State Budget Committee and Legislative Council that it would need 216 more case managers to comply with the law. In response, DCS was appropriated more money specifically to hire more managers; however, these funds were insufficient to meet the maximum caseload requirements. The appeals court acknowledged the importance of these managers and that increased caseloads leads to higher turnover and burnout.

The appeals court first decided if Price had a private cause of action under the statute. Generally, a private party may not enforce rights under a statute designed to protect the public and with a comprehensive enforcement mechanism. This statute was designed to protect the public through consistent, efficient, and effective administration of child welfare services. Additionally, DCS had no duty to a particular individual. The legislative intent was to protect the public, therefore no private cause of action was created.

Price asked the court to mandate and compel DCS to comply with the unfulfilled duty of caseload maximums. To receive a mandate, Price must have a clear right to relief and DCS must have failed to perform a clear, absolute, and imperative duty

(Cont’d on p. 35)
STATE CASES

Alaska


TERMINATION OF PARENTAL RIGHTS, REASONABLE EFFORTS

Father appealed termination of his parental rights, arguing child welfare agency failed to make reasonable efforts to reunify him with son. Court found agency’s consistent reunification efforts for about 25 months sufficiently remedied early failure to make reasonable efforts. Father was diagnosed with at least three different mental disorders, did not follow up with treatment referrals, and was hostile to agency workers. Father’s refusal to acknowledge mental health issues prevented success of reunification efforts.


TERMINATION OF PARENTAL RIGHTS, ICWA

Trial court did not err in terminating parental rights to child subject to Indian Child Welfare Act (ICWA). Father failed to remedy his heroin abuse despite substantial efforts by child welfare agency to provide remedial services and rehabilitative programs. Father also spent time in jail both before agency took custody of child and while agency worked with father on substance abuse issues.

California


Father appealed finding of his four-year-old child as dependent. Father’s possession of methamphetamine found in truck was likely to recur and supported finding of dependency based on risk of harm to child. As matter of first impression, father’s storage of loaded gun in closet also constituted risk sufficient to support dependency. Gun being in bag on shelf would not deter child from discovering it and even with gun removed by law enforcement, father’s involvement in drug trafficking indicated potential of future gun risk.

Idaho


TERMINATION OF PARENTAL RIGHTS, COURT ORDERS

Mother claimed trial court violated her right to due process by terminating her parental rights without complying with statutory procedural requirements. Trial court failed to issue written order containing findings of fact and conclusions of law. Neither original nor amended judgment recited facts on which court relied; amended judgment merely tried to incorporate judge’s oral statements by reference. Appellate court remanded case for written judgment containing required findings.

Indiana


Juvenile appealed delinquency adjudication for conspiracy to commit aggravated battery in plot to bring guns to school and target two students. Prosecution established requisite reasonable probability that social media records corresponded to juvenile’s and classmate’s accounts and that juvenile and classmate authored conversations. Juvenile admitted to having social media conversations with classmate and said classmate made threats to shoot up school, asked juvenile for help conducting shooting, and social media records showed juvenile agreed.

Maine

In re Logan M., 2017 WL 444043 (Maine). TERMINATION OF PARENTAL RIGHTS, SUBSTANCE ABUSE

Evidence in proceeding to terminate mother’s parental rights supported her unfitness. Mother had longstanding history of substance abuse, insisted she could drink alcohol because it was legal even though she had addictive personality, and required mental health counseling. She caused significant distress to one of her two children and could not ensure their safety.

Maryland


Mother and father appealed adjudication of their children as dependent. While mother was incarcerated, nine-year-old child reported father sexually abused her. As matter of first impression, statute governing admission of out-of-court statements by child victim of abuse does not require court to first conduct preliminary competency determination. Court noted different concerns between competency of child witness to testify and admissibility of prior out-of-court statement by abused child.

Massachusetts


As matter of first impression, mother and father, whose parental rights were terminated, retained standing to participate in hearing on post-termination visitation that took place after matter was remanded. Even though termination of parental rights order became final after trial and appeal, hearing after remand was continuation of termination proceeding to which parents were already party.

Missouri

In re J.P.B., 2017 WL 65455 (Mo.). TERMINATION OF PARENTAL RIGHTS, INCARCERATION

In termination of parental rights proceeding, trial court’s finding of father’s unfitness to parent based on his incarceration did not render statute unconstitutionally vague. Although second statutory provision provided incarceration alone could not be grounds for termination, it applied only other subsections. Child had been in care for over one year, father was unable to care for child and would be incarcerated for at least 33 more months until child was five years old. Father had never met child and had no parent-child bond.

Montana

In re B.W.S., 386 Mont. 33 (2016). TERMINATION OF PARENTAL RIGHTS, SIBLING PLACEMENT

Trial court’s determination that continuing child’s placement with foster parents, rather than placing child with custodians of child’s half-siblings, was in child’s best interest was not an abuse of discretion. Custodians waived appellate due process argument when they failed to raise argument during trial. Child had resided with foster parents for over three years and had bonded with foster parents and siblings.

New Jersey


Father’s attorney’s failure to ensure father received fact-finding hearing in dependency case constituted ineffective assistance of counsel. Father did not agree to truncated procedure for dependency determination based solely on judge’s review of child welfare agency reports. Father did
not waive his right to fact-finding hearing, and there was no indication father’s attorney advised him he had right to hearing or discussed implications of waiver of hearing.

New York
*In re Stephen D.*, 44 N.Y.S.3d 714 (2016). DEPENDENCY, SUBSTANCE ABUSE In dependency proceeding against mother based on physical condition of newborn, who tested positive at birth for both cocaine and opiates, court directed child welfare agency to include provisions in final dispositional order directing mother to attend birth control counseling, see doctors about birth control and addiction, and take whatever steps she chose to prevent another pregnancy until child was safely out of foster care and back in her care. Mother had history of drug abuse and giving birth to drug-addicted infants.

North Carolina
*State v. Saldiver*, 794 S.E.2d 474 (N.C. 2016). JUVENILE JUSTICE, DUE PROCESS Following denial of motion to suppress, 16-year-old juvenile pleaded guilty to felony breaking and entering. Juvenile asked to phone mother during custodial questioning by police. Call was allowed and interrogation continued. Supreme court ruled juvenile’s statement, “Um, can I call my mom?” was not clear and unambiguous invocation of right to have parent or guardian present during questioning. Juvenile did not condition his interview on first speaking with mother and had signed portion of juvenile rights form expressing desire to proceed on own.

Ohio
*In re A.J.*, 016 WL 7386247 (Ohio). TERMINATION OF PARENTAL RIGHTS, PLACEMENT Child welfare agency sought termination of mother’s parental rights and permanent custody of child after deciding not to place child with maternal aunt. Mother’s request for discretionary appeal was accepted and supreme court found trial court did not abuse its discretion in accepting agency’s decision to reject aunt as substitute caregiver due to lack of income. Aunt was not present at dispositional or permanent custody hearings to contest agency’s decision, and neither aunt nor mother objected to plan to place child with father.

Oregon
*In re L.M.G.M.*, 2017 WL 106016 (Or. Ct. App.). TERMINATION OF PARENTAL RIGHTS, ICWA Child welfare agency made active efforts to provide remedial services and rehabilitative programs to prevent breakup of Indian family, as required under Indian Child Welfare Act (ICWA). Agency referred father to counseling, which he stopped attending. Caseworker attempted to renew counseling but father became angry and left meeting. Agency provided parents with parenting coach, who described their progress as “dismal” due to cognitive delays and mental health issues, and offered housing and job placement assistance.

Rhode Island
*In re Livia B.L.*, 2017 WL 66321 (R.I.). TERMINATION OF PARENTAL RIGHTS, INCARCERATION Stepfather and mother filed joint petition to allow stepfather to adopt child. Trial court terminated father’s parental rights and granted stepfather’s petition to adopt. On appeal, supreme court found evidence supported finding incarcerated father abandoned daughter. Father had no contact with daughter for over three years after being incarcerated, his visitation motion was rejected by court’s clerk and he did not attempt to refile it, and attempted contact with daughter, who testified he sent no more than five cards while incarcerated, was halfhearted at best.

Utah

Vermont
*In re P.K.*, 2017 WL 66335 (Vermont). TERMINATION OF PARENTAL RIGHTS, COURT ORDERS After mother entered post-adoption contact agreement with paternal grandmother, she voluntarily relinquished her parental rights. Child was later removed from grandmother’s home for neglect. Trial court acted within its discretion in denying mother’s motion for relief from termination judgment. Mother made choice to relinquish rights when fully aware of potential consequences, and need for finality of judgments was particularly great in parental rights termination cases.

Wyoming
*In re K.G.S.*, 386 P.3d 1144 (Wyo. 2017). TERMINATION OF PARENTAL RIGHTS, DUE PROCESS Father appealed order terminating his parental rights, claiming he was denied due process when not properly notified of hearings and multidisciplinary team meetings throughout dependency proceedings. While notices may have been incorrectly addressed, father conceded he received notices. Father was represented by counsel and participated fully in termination proceedings.

FEDERAL CASES
Fourth Circuit
*United States v. Schmidt*, 845 F.3d 153 (4th Cir. 2017). SEX ABUSE, DEFINITIONS Defendant who pled guilty to traveling in foreign commerce and engaging in illicit sexual conduct with minor challenged his sentence claiming insufficient evidence to support travel element of statute. Defendant spent 18 months in Philippines on series of two-month tourist visas. Term “traveling” denotes broad concept of movement abroad and may continue after significant amount of time in given location until party either returns to place of origin or permanently resettles elsewhere.

Ninth Circuit
*Hardwick v. County of Orange*, 844 F.3d 1112 (9th Cir. 2017). LIABILITY, CASEWORKERS Child brought § 1983 action against county and county social workers alleging they maliciously used perjured testimony and fabricated evidence in dependency proceeding resulting in mother’s loss of custody. Appellate court held social workers were not entitled to absolute immunity, and child’s due process and Fourth Amendment rights to be free from perjured testimony and deliberately fabricated evidence in dependency proceedings were clearly established.
children who have been abused, neglected, or abandoned by a parent or legal guardian, and is available to children within and outside the child welfare system. Unlike all other forms of immigration relief, the state court plays a role in the SIJS process.

Practice tips:
- State court judges who hear family law, dependency, delinquency, or many other types of cases may be presented with requests for orders with SIJS findings either within traditional matters heard by those courts or for SIJS separately.
- Attorneys who practice in state court may seek those orders on behalf of adult or minor clients.
- Court clerks may be called upon to arrange interpreter services for court hearings or issue notice of proceedings to individuals in foreign countries.
- Everyone involved can benefit from an understanding of the purpose of SIJS, relevant court procedures, and how state courts play a critical role in vulnerable children’s access to this form of humanitarian relief.

Overview of SIJS
SIJS does not automatically grant citizenship or lawful permanent residence (LPR), which could eventually lead to citizenship. SIJS provides eligible abused, neglected, or abandoned immigrant youth access to a path to lawful permanent residence. And state courts do not decide whether a youth is an SIJ or make any other immigration determinations. Federal decision makers approve or deny applications seeking SIJ classification and determine if the youth can remain in the U.S.5

Available since 1990, SIJS is governed by the Immigration and Nationality Act § 101(a)(27)(J).6 The relevant legal eligibility requirements were updated in the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) (see eligibility section below).7 How petitions or motions seeking orders with SIJS findings enter court, the process to follow once there, and how determinations about final orders are made are matters of state and local law and procedure.

The state court considers requests for an order with certain findings, known as an SIJS “predicate order.” If granted by a state court judge, this predicate order is included in the youth’s SIJS application that she submits to U.S. Citizenship and Immigration Services (USCIS), the federal agency that determines eligibility for immigration benefits.

Without this preliminary state court order, a child cannot seek SIJS from USCIS. State courts make these critical threshold determinations because of their responsibility to protect children under their jurisdiction and their expertise—expertise recognized by Congress when it delegated this role to state courts—in making decisions about the welfare and best interests of children.

Practice tips:
- Some state court judges may struggle with how to handle these cases involving immigrant children, thinking it is a federal issue. But state courts are not being asked to decide if the immigrant child or youth should be granted lawful status in the U.S.—that is an issue for the federal government to determine. State courts are being asked to provide factual findings about a vulnerable child in the predicate order.
- Judges and attorneys who want to know more about SIJS can turn to the relevant federal law.8 Proposed federal regulations updated to reflect the TVPRA statutory changes were released in 2011, but have not yet become final.9 As a result, parts of the federal regulations still refer to earlier versions of the SIJS law and conflict with current law; judges and attorneys should avoid following the regulations that reflect pre-TVPRA requirements, as such practice may lead to confusion and error.

SIJS Eligibility
Immigrant youth eligible for SIJS are unmarried noncitizens under age 21 who are under the jurisdiction of a state juvenile court, for whom the court has made the following findings:
- The child has been declared dependent by a juvenile court or the court has placed the child in the custody of a state agency, individual, or entity appointed by a state or juvenile court;
- The child’s reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and
- The child’s best interest would not be served by being returned to his or her parents’ country of nationality or last habitual residence.10

The terms of SIJS eligibility were updated in 2008 by the TVPRA. Notable changes to the state court process include eliminating the requirement that the court find the child “eligible for long-term foster care.” Now a child need not have been in foster care or the child welfare system at all to be eligible for designation as an SIJ. Additionally, the court may find the child’s reunification with one or both parents is not viable. The child may have been abused, neglected, or abandoned by one parent and be living with the other parent and be eligible for SIJS.

Practice tip:
Under TVPRA changes, judges have more bases available for the SIJS findings. With the option of either finding the child dependent on the court or placing the child in the custody of an individual, agency, or entity, judges are able to make this finding in a wide range of cases, not just in child welfare cases, where the child is already considered “dependent” on the court. Now judges are able to make the finding in, for example:
- a delinquency case where a youth is committed to the care and
Helping Youth Access Immigration Relief

Several states have recognized and addressed the limitations that their existing rules of jurisdiction place on many immigrant youth who hope to access immigration relief in the state through SIJ classification. For example:

- In 2014, Maryland extended state equity court jurisdiction to include custody or guardianship of youth under age 21 (rather than 18) pursuant to a motion for an SIJS predicate order. Md. House Bill No. 315 (Maryland Acts 2014, c. 96, § 1), codified at Md. Code, Fam. Law § 1-201(a) & (b)(10).
- In 2015, California enacted a bill authorizing state probate courts to appoint legal guardians for youth 18-20 years of age or to extend existing guardianships past age 18 in connection with a petition seeking SIJ findings. Cal. Assembly Bill No. 900 (Stats. 2015, ch. 694), codified in relevant part at Cal. Prob. § 1510.1.
- In a 2016 case, the Massachusetts Supreme Judicial Court held that “the Probate and Family Court has jurisdiction, under its broad equity power, over youth between the ages of 18 and 21 for the specific purpose of making the special findings necessary to apply for SIJ status pursuant to the [Immigration and Nationality Act].” Recinos v. Escobar, 46 N.E.3d 60, 65 (Mass. 2016).
- Additionally, since 2008 in New York, a guardian may be appointed for a person up to age 21, with the consent of that person if he or she is over 18. N.Y. Fam. Ct. Act § 661(a).

By whatever method a child comes under the court’s jurisdiction, the petition or motion for SIJS findings likely will include supportive documents. For example, the petitioner may submit a memorandum of points and authorities; a proposed SIJS order; the child’s birth certificate; affidavits or declarations by the child, parent, and/or caregiver; and more. (See “Hearings” section below for more on supporting materials and evidence.)

Practice tips:
- Practitioners filing requests for an SIJS predicate order should be familiar with state court practice and rules of jurisdiction. Questions of whether or which court can hear the matter may lead to delays and setbacks that could derail the youth’s timeline for applying to USCIS for SIJ classification.
- A petitioner requesting an SIJS order may move to proceed in forma pauperis and have all filing and other fees waived. Most unaccompanied children entering the U.S. have fled severe poverty, and due to their age and/or inability to work here, have little to no funds. Their parents or caregivers may face challenges to earning a steady income and will seek fee waivers.

Notice and Service

Opposing parties to the matter (usually one or both parents) should be served with the motion for SIJS findings and the petition for the underlying matter (if one exists) according to state practice. If a parent lives outside the U.S., attempts at international service should be made. Serving parents who have allegedly abandoned their child or who live in remote areas may be particularly challenging. Alternate forms of service such as posting or publication may be requested for serving those parents or when more traditional forms of service have failed.

Difficulties completing service may create anxiety for a youth and/or adult petitioner since they are working against a firm deadline. While USCIS will accept SIJS applications any time they are filed, delays can cause problems for the applicant. In some cases, an SIJS application should be filed as soon as possible to ensure that an order is in place immediately.

Jurisdiction

Federal law directs that the first step in the SIJS process occur in state “juvenile courts.” A “juvenile court” for SIJS purposes is defined by federal regulations as “a court located in the United States having jurisdiction under State law to make judicial decisions about the custody and care of juveniles.” There are often multiple appropriate courts in a jurisdiction to consider these requests, such as family, domestic relations, probate, guardianship, dependency (or child welfare), delinquency, and adoption courts.

In areas without courts designated for child care and custody matters, the appropriate court may be one of general jurisdiction.

A request for an SIJS predicate order is generated through an action in state court. Often, it follows or accompanies a custody or guardianship petition or may be raised during a pending dependency or delinquency matter. But many other avenues to the child coming under court jurisdiction exist. Additionally, some jurisdictions allow declaratory judgments to be used to obtain the predicate order.
before the youth turns 21, state courts commonly lose jurisdiction over youth when they turn 18 and are no longer minors. Children and youth must secure the SIJS predicate order before the state court no longer has jurisdiction to do so under state law.15

Practice tips:

- Though it may be uncommon among other cases on the court’s docket, in SIJS matters, the only evidence about the location or address (or lack of information about location or address) of the opposing parent(s) may be the word of the child or petitioners.

Scant information may be available, especially when the child has not been in that parent’s care for some time or when geography or strained relationships challenge regular communication.

- Attorneys who seek to use alternative methods of service or expedited hearings on the SIJS petition should be prepared to explain why the matter is so urgent. Judges know age restrictions relevant to their courts, but may be unfamiliar with the consequences of the child “aging out” of the court’s jurisdiction without receiving the SIJS predicate order.

- All parties deserve to have their cases fairly considered and resolved promptly. Judges should note that parties seeking SIJS predicate orders are functioning under the added stress of securing the order before the youth’s window to accessing humanitarian immigration relief closes.

Hearings

Courts will often require one or several hearings on the request for SIJS findings. Some courts combine the hearing on any underlying case (e.g., custody) and the motion for SIJS findings. Other courts hold separate hearings. Because of the time constraints described above, the party or youth seeking an SIJS predicate order may seek an expedited or emergency hearing on their request.

A hearing on an SIJS petition or motion may proceed like any other within the court’s purview, or may differ because of the age of the child, the facts being shared, or for other reasons. When English is not the child or adult petitioner’s primary language, court staff should ask before the hearing whether an interpreter will be needed.

The court is being asked to issue an order with certain findings, so evidence to support those findings will be presented. As noted in the “Jurisdiction” section above, some evidence

ABA Policies on Special Immigrant Juvenile Status

Recent ABA policy resolutions support undocumented children’s access to Special Immigrant Juvenile Status (SIJS) and other forms of immigration relief.

Resolution 301. In February 2017, the ABA House of Delegates adopted Resolution 301, which supports preserving and developing laws, regulations, policies and procedures that protect or increase due process and other safeguards for immigrant and asylum-seeking children.

Among its provisions on procedures and protections affecting unaccompanied immigrant children, Resolution 301 urges Congress and the Administration to:

- preserve the availability of and current statutory framework for SIJS, which prescribes distinct roles for state courts and federal decision makers;
- increase the number of SIJ visas allotted to qualified applicants each year, because existing limits prevent all qualified children and youth from accessing the protections and benefits of a visa; and
- protect unaccompanied alien children’s sponsors from being subject to immigration enforcement actions. Reuniting unaccompanied children safely with their parents, relatives, and other “sponsors” serves children’s best interest and promotes their well-being, rather than prolonged periods in detention. Widespread immigration enforcement actions through the reunification process against parents and other sponsors will deter those adults from coming forward to take care of their children.

Resolution 113. In February 2015, the ABA House of Delegates adopted Resolution 113, which focused on the state court’s role in SIJS cases. The resolution urges:

- training state court judges and staff how to effectively and timely hear and adjudicate petitions or motions on behalf of immigrant children, including for the purpose of making SIJS predicate findings;
- implementing specialized state court calendars to hear and adjudicate SIJS matters, including creating expedited processes for youth aged 16 and older, given the firm age deadline in federal immigration laws;
- appointing counsel for unaccompanied children at government expense at all proceedings necessary to obtain SIJS and other remedies; and
- providing meaningful opportunities for children to consult with counsel before immigration courts conduct any hearings involving taking pleadings or presenting evidence.
may be presented in written form, such as: child’s birth certificate; marriage certificate; death certificate; statements by the child or parent or other caregiver; educational records from the child’s country of nationality or from the U.S.; medical and/or mental health records from the foreign country or the U.S.; other records reflecting the abuse, neglect, or abandonment that occurred either in the country of nationality or in the U.S.; statements of relatives or friends in the country of nationality who witnessed the abuse, neglect, or abandonment or other dynamics of the family relationship, conditions of the country of nationality, or circumstances.16

Additionally, testimony may be offered under direct examination. The nonabusing parent may share the child’s background and the nature of the abuse, neglect, or abandonment by the other parent, as may caregivers or others familiar with the family or child’s situation. Depending on her age and development, the child may testify, although children and youth who have suffered trauma may have even more difficulty than other children recounting those experiences or even a clear sequence of events during live testimony.17

Practice tips:

- Attorneys should flag cases requiring translation services as early as possible. Court staff should note that not all children arriving from Central America primarily speak Spanish; many speak indigenous languages and do not understand Spanish well. Especially if few interpreters for the child or adult petitioner’s language are available in the jurisdiction, arrangements with the live interpreter or for use of a telephone interpreting service should be made promptly.

- In some cases, the only evidence presented may be testimony or sworn statements of the child and/or caregiver. Especially for children who traveled to the U.S. alone, documentary evidence may be nearly impossible to access. Judges will need to make decisions as they would in other matters: based on the information provided and credibility of witnesses, with an understanding of the limits to availability of certain evidence in SIJS cases.

Resources & Tools
These resources offer more information about the SIJS state court process:


ABA Children’s Immigration Law Academy (http://www.americanbar.org/groups/public_servicess/immigration/projects_initiatives/cila.html) is the ABA’s new, expert, legal resource center in Houston, Texas. CILA serves legal service providers and pro bono attorneys representing unaccompanied children in immigration proceedings in Texas. CILA provides free trainings, technical assistance and an online platform for sharing immigration legal resources on unaccompanied minors. CILA staff also host working groups on SIJS and children’s asylum cases.

Immigration and Legal Resource Center (https://www.ilrc.org/immigrant-youth). This California-based immigrant legal services provider provides a wealth of SIJS information and tools useful for practitioners nationwide.

Kids in Need of Defense (KIND) (https://supportkind.org/resources/) provides pro bono attorneys to represent unaccompanied immigrant refugee children in their deportation proceedings, as well as legal screenings and Know Your Rights presentations.


Safe Passage Project (http://www.safepassageproject.org/what-is-sij-status/) provides many resources, including sample SIJS pleadings.

U.S. Citizenship and Immigration Services is the federal agency within the U.S. Department of Homeland Security that determines eligibility for immigration benefits, including SIJS: https://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status

The SIJS Order
State court orders that are part of successful SIJS applications include more than template language pulled from the federal law on SIJS. In addition to making the requested findings, the court can provide brief, illustrative facts that reflect its informed decisions about the child in the case before the court.18

1. Dependency or custody finding
Generally the SIJS order stands apart from other orders that are relevant to the underlying case, if one exists. In the SIJS order, the court need only note that it has found the child to be dependent on the court or that it has granted, at a certain point, custody (or some other form of legal caregiving, such as guardianship or adoption) to a particular person, state agency, or entity.
2. Reunification not viable with one or both parents
There is no federal definition of “abuse, neglect, or abandonment” that renders reunification with a parent not viable, and state definitions vary. State courts are to use their own statutory, regulatory, or other definitions or understandings of these terms or any “similar basis under state law.” (A “similar basis” may include other terms that are used regarding harm to children or the effect of the parent’s death on the child, if not considered abandonment under state law, among other possibilities.) And the abuse, neglect, or abandonment that prevents reunification with a parent may have occurred in the child’s country of nationality, in the U.S., or in another country.

As noted earlier, one change made by the TVPRA of 2008 was to clarify that the requirement for SIJS eligibility is a finding that reunification with one or both parents is not viable. As a result, a child living with a parent but unable to reunify with the other because of abuse, neglect, or abandonment by her other parent is eligible for SIJS. The nonoffending parent may seek a custody order as part of a divorce or separation, to prevent an abusive parent from trying to take the child, to more easily make medical or educational decisions for the child, or for many other reasons. Regarding the SIJS order, the focus is whether reunification with the other parent is possible.

The order should include brief factual findings about why reunification with the parent(s) is not viable.

3. Best interest finding
The final part of an SIJS order is the finding that the child’s best interest would not be served by returning to her country of nationality, or that of her parents. Although not all judges routinely make best interest determinations (e.g., those not serving in family, domestic relations, or dependency courts may be less familiar with the process), any state court judge can draw on existing state guidelines and resources for assessing a child’s best interest.

The most critical information to draw on, of course, is the evidence presented in support of the request for the SIJS order—the testimony, affidavits or other written statements, records regarding the family’s situation in the foreign country or in the U.S. (marriage certificates, death certificates, police records, court records, medical records, etc.), records regarding the child’s education, physical and mental health, and more.

The state court need not be an expert on the conditions of the child’s country of nationality. To determine what is in a child’s best interest, the court need only consider and balance the information available. Evidence of that country’s stability and prevalence of unrest, levels of violence, educational or employment opportunities, or other factors may be presented in written reports or elicited through testimony or statements of individuals who have lived there. Some petitioners may present home studies from the country of nationality and/or home studies from the U.S. The court can consider the opportunities the child has in the U.S. in terms of safety versus likelihood of harm, connections with nonoffending parents or caregivers, relationships with friends and other sources of support, medical and mental health well-being, educational opportunities, economic opportunities, other resources and opportunities, and other factors.

Practice tips:
- USCIS states that SIJS predicate orders should not include boilerplate language that reflects federal law or all details of the case. SIJS orders that provide brief, factual statements supporting the findings are most appropriate.
- Attorneys should tailor pleadings seeking an SIJS predicate order to the particular child and circumstances of the case.

Conclusion
Judges, attorneys, and state court professionals are critical to protecting immigrant children. The SIJS predicate order is a necessary first step in a child or youth’s path toward accessing humanitarian relief and adjusting status to lawful permanent residence.

The relief and adjustment of status determinations are immigration decisions made by the federal government. State courts play the early role of determining whether the child has suffered abuse, neglect, or abandonment, among other findings, and what serves the child’s best interests. Though those determinations come effortlessly to judges in certain state courts, others less familiar with child protection matters may benefit from court-driven and other resources. Standardized court procedures, common SIJS petitions and orders, and familiarity with practices in other jurisdictions can aid judges, attorneys, and court staff involved in these cases, to the service of vulnerable children in their courts.

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Endnotes

1. Daniel’s name has been changed to protect his privacy.

2. An “unaccompanied child” is a youth under 18 who lacks lawful immigration status in the U.S. and who has no parent or legal guardian in the U.S. or no parent or legal guardian available to provide care and physical custody. 6 U.S.C. § 279(g). Designation of a child as “unaccompanied” is made by the Department of Homeland Security’s Customs and Border Protection at the time they detain the child at the border. Many unaccompanied children are later reunited with parents or other relatives in the U.S.


5. Most commonly, decisions about SIJS and Lawful Permanent Residence (LPR) are made by the Department of Homeland Security’s U.S. Citizenship and Immigration Services. However, if a child is already in removal (deportation) proceedings, then an immigration court may rule on LPR applications.


11. Again, given the variety of courts and procedures across the country, not all these steps must be followed in a consistent way for a request for the SIJS predicate order to succeed. 12. 8 C.F.R. § 204.11(a).

13. Some states have made procedures for SIJS matters consistent across jurisdictions within the state. For example, California legislation (SB 873 of 2014) clarified which California courts have jurisdiction to hear requests for SIJS findings and those courts’ related roles and responsibilities. The state developed a standard court order for SIJS-related findings; template forms to request SIJS findings from different courts; and a uniform court procedure to be followed in probate court guardianship cases. For links to those resources, see ABA Center on Children and the Law, California Quick Guide on Child Welfare and Immigration Law, at 6 <http://www.americanbar.org/content/dam/aba/administrative/child_law/CWImmCalifornia.authcheckdam.pdf>. Other states have limited which type of courts may hear SIJS matters.

14. Generally, documents in a language other than English will be accompanied by a translation.

15. Under the settlement agreement in Perez-Olano v. Holder, No. CV 05-3604 (C.D. Cal. 2010), the child need not be under juvenile court jurisdiction when she files her SIJS application with USCIS if the juvenile court jurisdiction terminated due to the child’s age and the youth is under 21 at the time of filing with USCIS.

16. This is not an exhaustive list of evidence that may be offered to support a request for a SIJS order, nor must all these forms of evidence be presented before a court will grant an SIJS order. These forms of evidence are offered as examples.


18. As examples, see, e.g., the uniform court orders from California (http://www.courts.ca.gov/documents/l357.pdf), New York Family Court (https://www.nycourts.gov/forms/familycourt/pdfs/gf-42.pdf), and Washington (https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=46).


22. See, e.g., USCIS Policy Manual, Vol. 6, Part J, Ch. 3, Section A.2, 2016. (Price v. Indiana, cont’d from p. 27)
Protecting Immigrant Children’s Right to Education

by Priya Konings

In 1982 the U.S. Supreme Court issued a landmark decision affecting immigrant children and their right to public education in Plyer v. Doe. The decision held that immigrant children have just as much right to a free public education as U.S. citizen children. It struck down a law created by the Texas legislature denying funding to local school districts to educate undocumented immigrant children from grades kindergarten to 12th grade.

The Supreme Court based its decision on the equal protection clause of the Constitution, noting “we are unable to find in the congressional immigration scheme any statement of policy that might weigh significantly in arriving at an equal protection balance concerning the State’s authority to deprive these children of an education.” In other words, the undocumented status of these children does not “provide a rational basis for depriving them an education.” Rather, “[b]y denying these children a basic education,” the Court said, “we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation. Such discrimination can hardly be considered rational.”

This historically significant decision ensures all children in the United States have the right to a free, appropriate public education. Even the dissent noted it “is senseless for an enlightened society to deprive any children—including [unauthorized immigrants]—of an elementary education,” in part because “the long-range costs of excluding any children from the public schools may well outweigh the costs of educating them.”

Despite this landmark decision, one million undocumented immigrant children in the United States face serious challenges accessing their right to education. We often think the primary challenge these immigrant children face is the imminent risk of deportation. This is a pressing issue, but many other problems affect their day-to-day life. Among these challenges are issues related to accessing education, ranging from laws aimed at attempting to curtail the education rights of immigrant children to local administrators seeking to institute ad hoc mechanisms to bar immigrant children from receiving an education.

This article examines the challenges undocumented immigrant children face in receiving an appropriate education, how these challenges can affect their ability to obtain legal relief in the United States, and some possible solutions.

Education Challenges for Undocumented Children

Enrollment

One primary barrier children in certain jurisdictions face to enrolling in school is proof of residency. In the District of Columbia, for example, any parent attempting to enroll their child in school must prove residency in the District. Immigrant parents are often barred from obtaining a driver’s license, and due to a lack of credit history, are often subletting or renting a room from a landlord without a formal lease agreement. As such they lack the proof needed for enrollment, and their children are not able to enroll in school.

Similarly, some jurisdictions have illegally required that the parent or child provide a social security number before enrollment can be completed. Anyone who is undocumented will not have a social security number. Despite being illegal, and regardless of the fact that the Department of Education and Department of Justice have repeatedly reminded school districts that such a requirement is illegal, school districts have been caught over and over again implementing such restrictions.

An even greater problem has emerged in certain counties in Virginia, where schools require the adult enrolling the child to provide proof of custody of the child. This barrier to enrollment is illegal in most states, including Virginia. Many immigrant parents and kinship caregivers lack custody papers and cannot access the court system to obtain such papers. School districts in Virginia have used this as a way to prohibit school enrollment. Legally, as long as a student can show he/she is a bona fide resident and not living there for the purpose of attending school, the student should be immediately enrolled. Custody papers are not required, but because many adults are unaware of this they often attempt to seek a custody order from a family court, which can jeopardize access to immigration relief for many children, specifically Special Immigrant Juvenile Status (SIJS).

SIJS is one of the ways immigrant children can pursue legal status in the United States. (See “A Guide for State Court Judges and Lawyers on Special Immigrant Juvenile Status,” also in this issue, for a full discussion.) The designation SIJS may be applied to children found by a state court to be unmarried, under age 21, placed in the custody of an individual or government entity, and with whom reunification is not viable due to abuse, abandonment or neglect by one or both parents. The state court must also find it is contrary...
to their best interest to return to their country of origin. These findings are often made by a state court judge at a custody hearing.

Parents and caregivers may be forced into family court prematurely, without consulting an immigration attorney, simply because the school insists the caregiver must obtain a court order for custody to enroll the child in school. These caregivers miss an opportunity for the family court to determine if it can make SIJS findings, which could lead to legal status for the child. Once a family court has granted custody of a child to a caregiver, that caregiver can no longer use a sole custody petition as vehicle to enter the court and ask for SIJS findings. Unless the caregiver knew to inquire about such findings from the court, which is unlikely unless the caregiver consulted an immigration or family law attorney, the caregiver would be precluded from accessing relief designed to protect abused and neglected immigrant children.

The restrictions and barriers immigrant children face when enrolling in school are cumbersome and arbitrary, and result in either the child not being enrolled in school or being precluded from obtaining legal relief for their immigration status.

Language Barriers
Once children do get enrolled, language barriers are common. A large number of immigrant children arriving in the United States speak Spanish. They are often teenagers who do not speak any English. Rather than receiving assistance, many of these children are pushed through the system with one hour of English language skills a day, forced to spend most of the day in a classroom where they cannot understand the teacher. According to sociologist Min Zhao, English mastery is the single most important prerequisite for academic success and socioeconomic assimilation of immigrant children in the U.S. Without appropriate English language training, these children are largely destined for academic failure.

The law upholds this belief that English language instruction is essential to success in the U.S. public school system. Nearly a decade before Plyer v. Doe was decided in 1982, the Supreme Court made an equally pivotal decision in a case pertaining to public education. This case was Lau v. Nichols, where the Court determined that school systems must provide English language instruction, and the failure to do so prohibits children from effectively participating in public education, which violates the Civil Rights Act of 1964.

Despite this, the majority of immigrant children are not receiving the level of English instruction they need to succeed. Many of them fall further and further behind, especially because their caregivers’ lack of familiarity with U.S. law and of the requirement that school districts are to provide appropriate language learning skills prohibits them from effectively advocating on behalf of the child.

Interrupted Educations
The United States receives large numbers of unaccompanied minors from El Salvador, Guatemala, and Honduras. In these countries, gangs are as powerful—if not more powerful—as the government, and in many respects are operating in lieu of a government. Gangs’ operations have resulted in widespread corruption and violence. Pre-teens and teens are common targets for gangs, which constantly search for new members to grow their alliance. As a result, many children drop out of school to avoid harassment and recruitment from gang members on their way to and from school, and during school hours. Parents and teachers are powerless against the gang members, and reporting to the police has no effect as the gangs are more powerful. As such, many children in these countries are unable to attend school for months, or even years at time.

Once in the U.S., immigrant students, especially teenagers, are often pushed toward “separate but unequal alternative programs.” Some schools will argue that because these kids will never graduate on time, they should attend an alternate program. For example, the Associated Press has found that in “at least 35 districts in 14 states, hundreds of unaccompanied minors from El Salvador, Guatemala, and Honduras have been pressured into attending alternate programs that are essentially an academic dead end.”

Many of these programs only teach English, thereby providing the child no additional education or supports in their native language, and some offer classes but no English language learning classes, thereby rendering any instruction offered useless. While the alternate programs can result in a GED, many do not ensure the child graduates with a certificate. These teenagers have a right to attend public education until age 21 (most states provide a free public education up to age 21), but sadly, because they are unaware of their rights, they are forced into alternative education programs and often do not successfully complete high school.

Inability to Access Special Education and Social Services
Many children arriving in the United States from Central America have witnessed or experienced extreme violence and trauma. El Salvador has the highest murder rate in the world, at almost 116 per 100,000, more than 17 times the global average. A quarter of all Salvadorans have been victims of crime. Schools in the U.S. are ill-equipped to accommodate children dealing with the impact of regular exposure to serious, ongoing violence in their home countries.

In the U.S., immigrant children are further hampered by cultural barriers, poverty, undocumented parents who are afraid of accessing public benefits, and mistrust of the system that “puts them at risk for developmental delays and poor academic performance.” Rather than requesting that students be evaluated to see if they have a qualifying disability that requires an
individual education program to implement special accommodations and services, or seek other academic and social-emotional supports such as counseling, therapy, tutoring, or a behavioral plan, educators often blame the child for not keeping up in school. Some teachers insist that once the children learn English they will catch up to their nonimmigrant peers, rather than providing them with the services they are legally required to provide. But without appropriate English language classes, as well as recognition and analysis of the effect of interrupted education, and an assessment of the trauma and its effects on children, these kids rarely get up to speed with their classmates.

Financial Aid
Notwithstanding the many challenges, some immigrant children prevail and seek higher education. These children face further roadblocks. The seminal case on educational rights of immigrant children, *Plyer v. Doe*, did not address financial aid for higher education. There is no federal financial aid for undocumented students, and many states do not offer state financial aid to undocumented immigrants. Some private colleges do offer financial aid, but such aid is often underadvertised, and there is little outreach to immigrant families to make them aware of these opportunities.

Many undocumented immigrant children come from impoverished families, largely because their families are unable to work legally in the U.S. Their dreams for higher education are often unrealized due to financial constraints. The reality of this situation seems to fly in the face of public policy considerations: societal progress is made by children receiving higher education, whether that child is a U.S. citizen or an undocumented immigrant.

Recommendations

**Remove school enrollment barriers.**
School districts and individual schools need to eliminate barriers to enrolling immigrant children. All children have a right to a free, appropriate education, and they should be unfettered in seeking an education. Arbitrary requirements for enrollment such as custody papers, lease agreements, and social security numbers need to be eradicated immediately. Alternative methods for showing residence should be clearly outlined for all front-line school staff. The McKinney-Vento Education of Homeless Children and Youth Assistance Act of 1987 outlines procedures for enrolling homeless youth in school, and similar procedures could be followed for immigrant children who face similar challenges.

**Provide English learning programs.**
Advocacy must be done to ensure school districts provide comprehensive English learning programs that are effective. Their programs need to be regularly evaluated to ensure they are providing immigrant children with meaningful instruction. The quality of instruction and programmatic features in a whole-school approach to instructing English learners is what matters most for promoting academic achievement.

There needs to be language and literacy instruction, integration of language, literacy, and content instruction in secondary schools, cooperative learning; professional development, parent and family support teams, tutoring; and monitoring implementation and outcomes. Further, because more and more English learners are enrolling in public schools, schools must improve the teaching skills of all K–12 educators through comprehensive professional development.

In fact, the Every Student Succeeds Act (ESSA), signed by President Obama in December 2015, has specific provisions for addressing the needs of English language learners. The law requires that English proficiency standards address the different English proficiency levels of English learners, so that state programs can be held accountable for providing English language programs that are appropriate and designed to improve English language proficiency amongst non-English speakers. States need to implement programs to ensure compliance with this federal law.

**Offer therapeutic services for immigrant children who have experienced trauma.**
Children who experience trauma may have a harder time reaching their full educational potential without specialized assistance. As noted above, many of the children arriving from Central America have experienced some kind of trauma, either in their home countries or on their journeys to the United States.

In some jurisdictions, like Montgomery County, Maryland immigrant students receive counseling regarding trauma they experienced. Schools in this area refer kids to local nonprofits that have Spanish-speaking counselors for specific types of trauma they may have experienced, such as sexual abuse.

The Montgomery County school district has also budgeted money to provide designated counselors for speakers of other languages to “identify educational, social and cultural needs of students and their families that can be met using school, community, and other resources. They support school staff in meeting the special needs of diverse socioeconomic students.”

Such counselors are trained in conflict resolution related to cross-cultural misunderstandings, as well as assessing the emotional needs of immigrant children.

Montgomery County also has a multilingual Parent Outreach Team that provides services in the community to parents of English as second language (ESOL) students to help them engage fully in the school system instructional program. By implementing such programs, schools help immigrant children work through cultural barriers and reach their educational potential.
Provide legal representation for immigrant children.

One top concern for undocumented children, and one reason they are unable to access the services and tools to excel in their studies, is their undocumented status. While schools need to improve the quality of education provided to undocumented students, many immigrant children are also eligible for legal relief. Finding them legal representation so they can access the law designed to protect them and provide a path to citizenship can be life-changing for many immigrant children, and their families who live in fear of deportation. Ensuring children in immigration proceedings are provided an attorney, much like children in the criminal justice system, is critical. Until that happens, schools need to work with local nonprofits and immigration law organizations to help undocumented children access the laws that were created to protect them.

Conclusion

A strong childhood education provides the basis for a future that is stable and secure. Communities and society at large benefit when all children receive an appropriate education. Immigrant children are forming larger and larger segments of our communities. Implementing laws and programs that encourage and facilitate the ability of these children to succeed in school helps everyone. By developing ways to include everyone in our public education system, our communities can reach their true potential. Advocates can reach out to local schools, nonprofits, and state and local governments to promote education success for immigrant children.

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Endnotes

2. Id.
3. Id. at 224.
4. Id. at 225.
5. Id. at 223, 224.
6. Id. at 242.
11. Id.
14. Id.
20. Id.
21. Id.
32. Id.
Research shows there is a strong connection between family time and safe reunification. We know that quality family time is a key indicator of earlier, and safer, reunifications. This article highlights practices that can improve the experience and outcomes for the child and family.

First, a note on language. In most parts of the country, child welfare practitioners use the term “visitation” when they are talking about time a child spends with her parents/siblings/extended family. Because that time is essential for a healthy family and because it is what all families do in everyday life, throughout this article uses the term “family time.” This may be a switch you’d consider in your jurisdiction to consider communicating the “normalcy” of this experience.

Preparation Matters
Family time, especially soon after a child’s removal, can be an extremely stressful experience for both the parents and child. Children may be scared, unclear about whether they can hug their parents in front of people, unsure why they were removed and afraid to ask, and generally feel anxious about sharing their feelings of hurt and sadness. Parents may worry about whether the child is angry at them, may be afraid to come to the agency’s office, may be uncertain about how to act in front of the case worker, and may be feeling ashamed and embarrassed. In addition to considering the logistics of the actual family time gathering, the professionals in the case should consider all of these emotions in supporting the family.

The logistics cannot be overlooked; they can be a key to a successful meeting. Family time should be a focus of the family’s case plan. The first time a family gets together after a child was removed should occur as soon as possible, ideally within 48 hours, and if need be, the judge should order this. Family time should be planned when it does not interfere with a parents’ work or child’s school schedule. It should occur in a place that is convenient for everyone, and preferably somewhere outside of the child welfare agency’s office (like a park, mall, or visitation center).

The caseworker should prepare the parent for what to expect during the time with the child. Parents often want to know if they can bring food or a gift. Parents also want to know if they will be supervised and by whom and the kinds of things they should say to their child if the child asks questions about when the family will be reunited. Helping parents prepare, logistically and emotionally, can go a long way toward successful family time.

Consider How Much Supervision is Necessary
In most jurisdictions, family time is always supervised, at least at the beginning of the case. Some practitioners have started to ask WHY? Why must the family time be supervised when the child came into care because, for example, of a housing issue or another reason having nothing to do with safety. In contrast, Georgia recently enacted legislation making unsupervised family time the default and it only becomes supervised by court order if the court finds unsupervised visitation is not in the child’s best interest. O.C.G.A. 15-11-112

It is difficult for a family to maintain their connections when someone is sitting nearby, watching every move and taking notes about every interaction. The level of supervision a family requires should be determined on a case-by-case basis. The caseworker should consider the reasons the child came into care, the child’s age, and other family needs. Attorneys for the children and the parents should advocate with the agency, and with the court if needed, to have the family time follow the least-restrictive setting concept—there should be as little supervision as possible with safety of the child being the primary consideration.

Family Time Should Mimic Family Life
In addition to a preference for unsupervised visits, caseworkers and courts should prioritize family time that actually mimics family life. Because the quality of family time is such a strong indicator of successful reunification, family time itself should resemble real life as much as possible. Concretely this means the visit should take place in locations that the family enjoys—a park, a relative’s home, the family’s church or favorite restaurant.

The family should be together as often as possible. If a family only sees each other for one hour once a week, for example, that means they would only be together for about two days a year. This is certainly not enough. When children are very young, they should see their parents several times a week, and the length of visit could be on the shorter side. When children are older, they may only see their parents once or twice a week, but they might visit for a few hours (or longer) at a time.

In addition to scheduled family time, parents should be encouraged to participate in the child’s normal activities. The parent should be told about all doctor and school appointments as well as extracurricular activities that they could go and enjoy. Even if the parents and child do not get to interact
at these events, it means a lot to both when a parent can see the child play a sport, act in a play, participate in a school concert, or meet the child’s friends.

Some jurisdictions such as New York City, have been making use of “visit hosts” as a way to have family time occur often and in settings that are familiar and comfortable for the family. A visit host is someone who the agency and family agree could oversee a visit safely. Examples include a pastor who allows the family to be together after a Sunday service while he is doing work in another room, a relative who hosts Sunday dinner, and a bowling alley manager who allows a father and son to bowl together each week. For more information and to see New York’s Visit Host Policy see the Resources box.

In other places, communities have created visiting centers. Often, these are in houses where staff can be on site, but out of sight, and families can do “family activities.” There are often kitchens so the family can make a meal, living areas to relax, play games, read books or work on homework together and bath tubs so parents can bathe their young children. This type of setting provides the answer to many of the concerns about supervision that some might have while providing a comfortable setting for the family.

Barriers to Quality Family Time
Of course there are practical issues that arise when stakeholders are considering improving the way they provide family time. Transportation to and from the gathering, staff time to organize and/or supervise, money to develop a family time center, and probably the most difficult, the will to change “the way we do things.” While all of these are real concerns, many jurisdictions have joined together to figure out creative solutions to overcoming these issues. In some places, like a county in North Carolina, all it took was a judge who kept ordering family time for babies to happen three times a week. At first the system was stressed by this, but then they came together and figured out how to make it happen. Understanding the importance of family time to the child’s well-being, as the judge did, provided strong motivation for family time that mimics family life in that county.

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Resources:


Videos:
Pennsylvania: https://www.youtube.com/watch?v=vOrdjqHPBsY&feature=youtube – visitation starts at 28:37

New Jersey: https://www.youtube.com/watch?v=Cm9-UJJJ2Uc
Representing Child Welfare Clients: Best Practice Considerations

U.S. Department of Health and Human Services,
Administration for Children and Families, Children’s Bureau

On January 17, 2017, the U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau issued new federal guidance on the importance of quality legal representation for child welfare system clients. The guidance shares research, best practices, and strategies to promote quality legal representation for parents, children, and child welfare agencies at all stages of child welfare proceedings. It stresses the value of early appointment of counsel, training and specialization for child welfare attorneys, and the need for a multidisciplinary team approach to representation.

Best practice considerations from the guidance are reprinted here. Readers are encouraged to read the full Information Memorandum.

There are a number of strategies that a jurisdiction can employ to ensure high-quality legal representation for all parties in child welfare proceedings. Each of the strategies can be adjusted in scale and approach to meet the unique characteristics and resources available in all jurisdictions. There are also a number of best practices that attorney offices or independent attorneys practicing child welfare law can adopt to provide high-quality legal representation. Both structural and attorney best practices are included.

Structural Best Practices to Ensure High Quality Legal Representation

- Adopt, implement, and monitor statewide standards of practice for parents’ attorneys, children’s attorneys and agency attorneys.

- Implement binding authority or constitutional protection requiring parents, children and youth to be appointed legal counsel at or before the initial court appearance in all cases.

- Develop a formal oversight system for parents’ attorneys and children’s attorneys to ensure quality assurance. This can be achieved through the creation of an office, the addition of a division to an existing office such as the public defender’s office, as a duty for the presiding family court judge, through the work of a committee or by any other means that are used to ensure accountability and continuous quality improvement. In determining the assignment of oversight responsibilities, it is important to address any conflict of interest issues.

- Institute mandatory annual training requirements for parents’ attorneys, children’s attorneys and agency attorneys. Where resources do not exist for in-person training or geographical challenges make attendance difficult, states are encouraged to explore distance learning and online training experiences.

Research shows legal representation for all parties in child welfare proceedings is linked to increased party engagement, improved case planning, expedited permanency and cost savings to state government.

Resource:

IM-17-02: High Quality Legal Representation for All Parties in Child Welfare Proceedings
Published: January 17, 2017
Available online:
Communicate regularly with clients (at least monthly and after all significant developments or case changes) and in-person when possible.

Ensure that language translation services and other accommodations to ensure equal access and full participation in all processes are available to all clients at all stages of child welfare proceedings.

Thoroughly prepare for and attend all court hearings and reviews.

Thoroughly prepare clients for court, explain the hearing process and debrief after hearings are complete to make sure clients understand the results. For children this must be done in a developmentally appropriate way.

Regularly communicate with collateral contacts (i.e., treatment providers, teachers, social workers).

Meet with clients outside of court (this provides attorneys an opportunity to observe clients in multiple environments and independently verify important facts).

Conduct rigorous and complete discovery on every case.

Independently verify facts contained in allegations and reports.

Have meaningful and ongoing conversation with all clients about their strengths, needs, and wishes.

Regularly ask all clients what would be most helpful for his or her case, what is working, and whether there is any service or arrangement that is not helpful, and why.

Work with every client to identify helpful relatives for support, safety

### Promoting Procedural Justice in Child Welfare Cases

Lack of trust and lack of familiarity with the child welfare system can create significant barriers to engagement, especially for youth and parents. Lack of engagement can stand in the way of identifying strengths, needs and resources and impede all elements of case planning. When a parent or youth is unable or unwilling to engage with child protective services or agency caseworkers it is less likely that they will feel the process is fair.

Research supports that when a party experiences a sense of fairness, he or she will be more likely to comply with court orders, return for further hearings, trust the system, and will be less likely to repeat offenses. In the legal field, this feeling of fairness or trust in court proceedings is known as procedural justice. Researchers have identified four key components to procedural justice:

1. **Voice**—having one’s viewpoint heard;
2. **Neutrality**—unbiased decision makers and transparency of process;
3. **Respectful treatment**—individuals are treated with dignity;
4. **Trustworthy authorities**—the view that the authority is benevolent, caring, and genuinely trying to help.

Several studies and program evaluations examining legal representation in child welfare proceedings have identified competent legal representation as a key element in enhancing party perceptions of procedural justice. A small study in Mississippi compared the outcomes of child abuse and neglect cases for parents who did and did not have legal representation in two Mississippi counties. Parents who were represented by an attorney believed that they had a greater voice in determining case outcomes, and they understood the court process better than parents without attorneys. In addition, preliminary findings indicate a trend toward more positive outcomes in cases where parents were represented by an attorney: they attended court more often, stipulated to fewer allegations, and had their children placed in foster care less often.

The importance of procedural justice has also been recognized by the Conference of Chief Justices and the Conference of State Court Administrators. In 2013, the Conferences jointly adopted a resolution to support and encourage state supreme court leadership to promote procedural fairness, identifying procedural justice as critical for courts to promote citizen’s experience of a fair process.


**Sources:**


planning and possible placement.

- Attend and participate in case planning, family group decision-making and other meetings a client may have with the child welfare agency.

- Work with clients individually to develop safety plan and case plan options to present to the court.

- File motions and appeals when necessary to protect each client’s rights and advocate for his or her needs.

Providing high-quality legal representation to all parties at all stages of dependency proceedings is crucial to realizing these basic tenets of fairness and due process under the law. Research shows legal representation for all parties in child welfare proceedings is linked to increased party engagement, improved case planning, expedited permanency and cost savings to state government. Jurisdictions should work together to ensure all parties receive high-quality legal representation at all stages of dependency proceedings.

Benefits of Legal Representation for Child Welfare Clients

Legal representation for children, parents and youth contributes to or is associated with:

- increases in party perceptions of fairness;
- increases in party engagement in case planning, services and court hearings;
- more personally tailored and specific case plans and services;
- increases in visitation and parenting time;
- expedited permanency; and
- cost savings to state government due to reductions of time children and youth spend in care.

The decisions courts make in child welfare proceedings are serious and life changing. Parents stand the possibility of permanently losing custody and contact with their children. Children and youth are subject to court decisions that may forever change their family composition, as well as connections to culture and heritage. Despite the gravity of these cases and the rights and liabilities at stake, parents, children and youth do not always have legal representation. Child welfare agencies also sometimes lack adequate legal representation. In some states parents or children may not be appointed counsel until a petition to terminate parental rights has been filed. The absence of legal representation for any party at any stage of child welfare proceedings is a significant impediment to a well-functioning child welfare system.