

CHILD PROTECTION BEST PRACTICES BULLETIN

Innovative Strategies to Achieve Safety, Permanence, and Well-Being

BEST PRACTICES BULLETINS

- ADVANCE CALENDARING
- CONNECTING CHILDREN WITH INCARCERATED PARENTS
- EDUCATION ADVOCACY
- FAMILY ENGAGEMENT
- FOSTER PARENT INVOLVEMENT
- MAXIMIZING THE INVOLVEMENT OF YOUNG PEOPLE
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WORKING WITH UNDOCUMENTED AND MIXED STATUS IMMIGRANT CHILDREN AND FAMILIES

WHAT IS Working with Undocumented and Mixed Status Immigrant Children and Families?

Working with Undocumented and Mixed Status Immigrant Children and Families means carefully taking into account immigration status, language requirements, cultural sensitivity (see Best Practice Bulletin Preserving Cultural Connections), and eligibility criteria for services in working with these families. It means becoming aware of the issues that undocumented and mixed status immigrant families face, and working with your immigrant clients to develop solutions.

Immigrant families constitute a large and growing segment of families in the United States; according to the Urban Institute, almost one-fourth of children and youth are either immigrants themselves or children of immigrants. Additionally, a large number of immigrant households are composed of mixed status families where one or both parents are non-citizens and one or more children are citizens. It is estimated that at least 20% of children in New Mexico are children of immigrant families (Capps & Fortuny, 2006). In 2008, there were an estimated 80,000 undocumented immigrants in New Mexico. (Passel & Cohn, 2009)

Because data are not uniformly collected nationally or statewide, the exact number of undocumented and mixed status immigrant children and families in the child welfare system is not known. Accurate information about immigration status is difficult to obtain because of confusion about immigration status, fear of jeopardizing the immigration status of the family, language issues facing the child and or parent, and because the information may be different for each family member. One recent study from the National Survey of Child and Adolescent Well-Being (NSCAW), suggests that children of immigrants represent 8.6 percent of all children who come to the attention of the child welfare system. It is important to note that among children of immigrants, more than 4 out of 5 are U.S. born citizens. Foreign-born immigrant children represent less than 3 percent of all children who come to the attention of the child welfare system.⁽¹⁾

While the reasons that undocumented and mixed status immigrant families become involved in the child welfare system are no different than other families, immigrant families face many unique challenges. The trauma of migration and adjusting to a new culture, fear, poverty, challenges finding work, and the inability to access services create additional stressors for the family. Some immigrant parents find it difficult to comply with service plan requirements because they are not eligible for publicly funded services. Many face enormous obstacles, including threat of deportation, acculturation, lack of a social security number, obstacles to obtaining state ID or driver's license, limited access to government benefits, limited ability to enroll in independent living programs, no access to federal financial aid for college, and the inability to work legally.

WHAT IS *Current Practice*?

Under federal law, any abused or neglected child is eligible for short-term emergency medical care, shelter or other services necessary to address an emergency regardless of immigration status. This includes placement in foster care and services within the child welfare system.

What is Current Practice?...

In New Mexico, when a child is an abused or neglected child, CYFD is required to determine the child's immigration status. Undocumented and mixed status immigrant children and families are eligible for services from CYFD, without regard to their citizenship. If family members are undocumented or mixed status, the service plan should address whether the family needs help accessing community agencies that work with undocumented immigrants to assist the family in applying for immigration relief available under federal immigration law. CYFD is also required to make reasonable efforts to place siblings together. If the siblings have mixed immigration status, the service plan should specifically address steps to access immigration relief available to safeguard the children's ability to continue to be placed together.

If the permanency plan is not reunification, CYFD must specifically address whether the child may be eligible for Special Immigrant Juvenile Status (SIJS). If the child is eligible for SIJS and there has been a determination that SIJS is in the child's best interest, CYFD must file the SIJS petition on behalf of the child. If the petition has not been granted before the child's 18th birthday, New Mexico courts retain jurisdiction over the case until there is a final decision by federal authorities.

Undocumented children are entitled to attend public schools and receive special education services if necessary. Because other services available to undocumented children may be limited, understanding children's rights to appropriate educational services is critical. School Districts or local communities may also have special services available to support immigrant students, including undocumented immigrant students.

WHAT IS *Best Practice*?

Best practice for working with undocumented or mixed status immigrant children and families requires creativity, care, and timeliness. The following practices are recommended:

- Use "proxy questions" that help gather information about children and families without directly inquiring about immigration status. Examples of proxy questions include questions about country of origin, language spoken at home, English proficiency, and length of time in the U.S. The use of these questions is recommended by Casey Family Programs, will help address concerns about jeopardizing the legal status of family members, and reduce the chance that questions will discourage families from seeking services. These questions can help to identify trends and systemic issues, provide important informational resources, increase attention to cultural issues, and identify possible eligibility for services.
- Ensure that everyone working within the child welfare system is educated about various immigration relief programs and other immigration issues that are likely to arise in cases. Train staff about these issues and the effect they have on access to services. Also, ensure that child welfare staff receives comprehensive cultural sensitivity training.
- Provide culturally and linguistically appropriate services to immigrant children and families. Make interpreters available during all child welfare staffings, meetings, and court proceedings. Do not use children as interpreters for their parents.

Working with Undocumented and Mixed Status Immigrant Children and Families cont...

Best Practice cont...

- Ensure that immigration status is not used as a reason to deny services or kinship placement of children in foster care.
- Work to improve the understanding among immigrant families of the services available to them.
- Include timely legalization of immigration status in the permanency plan and the transition plan for undocumented youth in foster care.
- Provide early assessments of immigrant children and families for potential eligibility for immigration relief through such means as SIJS, VAWA, U or T Visas, or other avenues. Because of the time-sensitive nature of many immigration relief programs, early identification is essential to allow children and family members to apply for appropriate forms of relief.
- Know the services and rights afforded to immigrant children and families. For example, all children, regardless of legal status, have a right to equal access to K- 12 public school programs. Proof of U.S. citizenship is not required for enrollment. Additionally, all immigrants, regardless of legal status, are eligible for emergency Medicare, which covers treatment for medical emergencies. Hospital emergency departments must screen and stabilize all people with an emergency medical condition under the federal Emergency Medical Treatment and Labor Act.
- Work with foreign consulates to locate parents and family members in other countries, collect evidence and documentation such as birth certificates, involve parents in court-ordered service plans, obtain home studies on relatives in foreign countries, and safely reunify and repatriate children to family members in foreign countries.

WHAT DO *Professionals and Advocates* need to know?

Immigration Relief

Children in the child welfare system who lack legal immigration status are particularly vulnerable. While in foster care, undocumented children will usually receive all necessary services, but once they age out of the system they lose all benefits. As undocumented adults they cannot live permanently in the U.S., travel freely, get financial aid for college, or be legally employed, even if they have lived most of their lives in the U.S. The following are possible avenues for immigration relief.

Special Immigrant Juvenile Status (SIJS)

An undocumented child who is unable to reunify with one or both parents can be granted Special Immigrant Juvenile Status (SIJS) and become immediately eligible to file for permanent residency in the U.S. Early identification of children who qualify for this status is extremely important because a child can become ineligible for SIJS status once the court terminates jurisdiction. Early identification is also warranted because the process can take over a year.

SIJS is a complicated process that requires identifying potentially eligible foster children, obtaining appropriate State Court orders to establish that eligibility, and making the appropriate application to immigration officials. For a child to be eligible for SIJS, the dependency court must make the following findings in a special SIJS order before an administrative action requesting status can be filed:

- The child is unable to reunify with one or both parents due to abuse, neglect, or abandonment.

Working with Undocumented and Mixed Status Immigrant Children and Families cont...

What do professionals and advocates need to know cont...

- The child has a permanency plan other than reunification.
- It is not in the child's best interest to be returned to her country of origin.

Before submitting the application to the immigration office, it is important to evaluate the possible risk of deportation if the case is not approved.

VAWA, U Visa, or T Visas

Violence Against Women Act (VAWA) and U or T Non-Immigrant Visas are all potential avenues for immigration relief that can be explored. VAWA can be an avenue for a child who is abused and undocumented to become a Legal Permanent Resident through a self petitioning process. U and T Non-Immigrant Visas allow for undocumented children who have been victims of serious crimes (U Visas) or who are victims of trafficking (T Visas) to obtain Legal Permanent Resident status. For more information on process and requirements for these avenues of relief, visit www.ilrc.org.

Legal Status

Best practice suggests that information about a client's immigration status only be used for the purposes of acquiring services, or to determine eligibility for benefits, and not be shared with immigration enforcement officials unless it is a legal requirement. Immigrants fall into different categories that carry different entitlements to benefits, services, and legal rights:

- Legal Permanent Residents (LPRs) have been granted permission to permanently live and work in the U.S. They are non-citizens with "green cards" and they have a social security number. They may be eligible to become citizens and receive federally funded benefits after having a "green card" for three to five years, but can lose LPR status through criminal conduct. LPRs were estimated to be 31% of the U.S. foreign-born population in 2008. (Pew Hispanic Center estimates from March 2008 Current Population Survey)
- Naturalized Citizens are immigrants who have become U.S. citizens. They are eligible for all state and federal benefits. Naturalized citizens were estimated to be 36% of the foreign-born population in 2008.
- Legal Temporary Resident status is given to immigrants who have permission to remain, and in some cases, to work in the U.S., but are not necessarily on a path to becoming a Legal Permanent Resident or a Naturalized Citizen. Legal Temporary Residents were estimated to be 4% of the immigrant population in 2008.
- A refugee or asylee is someone legally admitted to the U.S. who cannot return to his or her country because of a "well-founded fear of persecution." The Office of Refugee Resettlement (ORR), a division of the U.S. Department of Health and Human Services, is responsible for resettlement of refugees, including unaccompanied refugee minors in the child welfare system and should be contacted when individuals with this status are identified. Nationally about 1,000 refugees come to the U.S. every year.
- Undocumented immigrants are those who entered the U.S. illegally, or immigrants who overstayed their visas. Undocumented immigrants are eligible for limited services and benefits, such as emergency Medicaid and education services. They may be eligible to apply for lawful immigration status, and may not know it. Undocumented immigrants were estimated to be 30% of the immigrant population in 2008. This status has significant implications for permanency planning for children because of challenges to service and limits it places on resources available to parents and children involved in the child welfare system.

WHAT IS *My Role*?

- As a JUDGE, you would ensure that adequate translation services are provided during proceedings. You would order culturally and linguistically appropriate services for the children and families. You would take into account immigration stressors when reviewing a case, and ensure that, if needed, the legalization of immigration status is included in the child's permanency and transition plans. As appropriate, you would make sure that findings comport with requirements of SIJS.
- As a CASEWORKER, you would facilitate the presence of adequate translators for children and families during every staffing, meeting, court proceeding, or other related event. You would ensure that children are not being forced to translate for their parents or vice versa. You would ask "proxy questions" that give you information regarding the child and family's needs and eligibility for services. You would help explain the child welfare system, the process and logistics regarding staffings, meetings, and court events. You would assess the child for immigration status needs and ensure that if needed, legal status is included in permanency and transition planning. If eligible for SIJS, you would prepare information for CYFD staff responsible for preparing the petition. You would also ensure that immigration status is not being used as a reason to deny services or kinship placement.
- As a PROTECTIVE SERVICES IMMIGRATION LIASON, you would communicate with the caseworker about any potential risks to applying for SIJS. You would consult with an immigration attorney if risk is identified. You would ensure that all application documents and fees are in order. You would attend the adjustment status interview with the child and caseworker.
- As a CHILDREN'S COURT ATTORNEY, you would ensure that when CYFD obtains ex parte custody of a foreign national child, the child's consulate is notified in writing without delay after obtaining custody. You would ensure that when given custody of a Mexican national child, that is a child who is a citizen of Mexico or has at least one parent who is a citizen of Mexico, the Mexican consulate is notified without delay. You would ensure that when given custody of a U.S. citizen child who has at least one parent who is a foreign citizen of any country other than Mexico, the appropriate consulate is notified, except in cases in which notification may create a risk to the child's safety or may impede the goal of reunification of the child with his or her family. If it is unclear whether the child is a foreign national, it is best practice to give the consulate notice. CYFD's policy is intentionally broader than the legal requirements created by the Vienna Convention because the consulate contact may facilitate locating family members, assist in permanency planning/placement, and help find resources in the foreign country. If the child is eligible for SIJS, you would file a proposed order with findings that comport with the requirements of SIJS.
- As a RESPONDENT ATTORNEY, YOUTH ATTORNEY, or GAL, you would ask "proxy questions" that help you understand the needs and barriers facing your client. You would be aware of the complicated legal needs facing undocumented and mixed status families and advocate accordingly. You would make efforts to communicate with foreign national clients located in other countries via the appropriate consulate. You would ensure that CYFD is filing appropriate applications for your child clients in a timely manner (SIJS, VAWA, U or T Visas, etc. (CYFD has responsibility to assist the child client in obtaining appropriate documents but code does not explicitly require assistance for parents). You would consider referring your parent clients to immigration counsel, for example, when the mother you represent may be eligible for relief under VAWA.

Working with Undocumented and Mixed Status Immigrant Children and Families cont...

What's my Role cont...

- As a CASA VOLUNTEER, you would become familiar with the potential barriers that exist related to immigration status, and help problem-solve issues. You would learn about the community resources available to immigrant children and families, and share them with the child, the caseworker, and the court. If the child is pursuing legal immigrant status, you would help the child stay out of trouble (through counseling, support, education, etc.), as getting into legal trouble jeopardizes permanent residency status. If needed, you would also help the child locate an immigration attorney who fully understands the issues involved and can advocate accordingly.
- As a CRB MEMBER, you would inquire specifically about avenues for immigration relief. You would document your observations and recommendations in the CRB report.
- As a PARENT, you would inquire about services available to you and your family, and you would tell your caseworker about potential barriers. You would identify family members who can serve as kinship caregivers in your absence.
- As a FOSTER PARENT, you would educate yourself regarding the issues that immigrant children and families face. You would talk with the child about her pre-migration life, if relevant, and work to preserve the child's culture of origin in her daily life. You would ensure that the child is enrolled in school, and receiving the rights afforded to him by federal law. You would report to the caseworker and the court about the child's experience and progress in foster care.
- As a CHILD or YOUTH, you would work with your CASA, GAL or Youth Attorney, and caseworker to make sure that they understand your concerns about your immigration status; you would tell them what you need and ask questions about your status and your rights. If determined to be eligible for SJIS, you would work with your caseworker and other CYFD staff to complete the necessary application and attend appointments.

References

⁽¹⁾First Focus Fact Sheet, "Children of Immigrants in the Child Welfare System" (June 2010) www.firstfocus.net

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