Title IV-E Reimbursement for Attorney Costs – Materials

- Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview
- ACF ACYF-CB-IM 17-02 – Legal Representation and Child Welfare
- Interdisciplinary Representation Model
- Parent Partners
- Best Practice Model of Child Representation
- Child Welfare Law Specialist Certification

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Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview

by Mark Hardin

For the first time, states can now claim federal matching funds through Title IV-E of the Social Security Act to help pay the costs of attorneys representing certain children and their parents in child welfare legal proceedings.[1] Before this change, federal matching funds were available to help pay for attorneys representing child welfare agencies, but not for children's or parents' attorneys. The following brief overview explains federal foster care matching funds as they relate to payments for parents' and children's attorneys.

This article is intended for people not familiar with rules of Title IV-E eligibility or the processes for claiming Title IV-E funds. It provides general background to assist courts and legal organizations as they seek to partner with child welfare agencies in leveraging this new source of federal support for child and parent representation.

Basic Explanation of Title IV-E Matching Funds

There are two principal categories of Title IV-E matching funds:

1. "Foster care maintenance payments" are payments to caregivers of eligible foster children. The federal government pays a percentage of the state payments to such caregivers.

2. "Administrative costs," generally speaking, pay for the administration and operation of the foster care system, encompassing many expenses incurred by the state child welfare agency, such as for agency staff, buildings, administration, and related contracts.

The federal government pays 50 percent of the share of administrative costs claimed for each Title IV-E eligible child. As the result of the recent policy change, states can now seek administrative cost reimbursement from the federal government to pay half of the cost of attorneys for children who are eligible for Title IV-E foster care benefits—and half of the cost of attorneys for their parents.

U.S. Children's Bureau Policy

On January 7, 2019, the federal Children's Bureau changed the Child Welfare Policy Manual Q/A 8.4B to remove question 18 and replace it with a new question 20. The following language reflects that change

> We want to notify you of a change to the Child Welfare Policy Manual (CWPM).
>
> We will remove CWPM Q/A 8.4B #18 and add the following new Q/A to section 8.4B:
>
> *Question:* May a title IV-E agency claim title IV-E administrative costs for attorneys to provide legal representation for the title IV-E agency, a candidate for title IV-E foster care or a title IV-E eligible child in foster care and the child's parents to prepare for and participate in all stages of foster care related legal proceedings?
>
> *Answer:* Yes. The statute at section 474(a)(3) of the Act and regulations at 45 CFR 1356.60(c) specify that Federal financial participation (FFP) is available at the rate of 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The title IV-E agency's representation in judicial determinations continues to be an allowable administrative cost.

Previous policy prohibited the agency from claiming title IV-E administrative costs for legal services provided by an attorney representing a child or parent. This policy is revised to allow the title IV-E agency to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings, such as court hearings related to a child's removal from the home. These administrative costs of legal representation must be paid through the title IV-E agency. This change in policy will ensure that, among other things, reasonable efforts are made to prevent removal and finalize the permanency plan, and parents and youth are engaged in and complying with case plans.

Scope of Funding: This language authorizes federal matching funds to help pay for the independent legal representation of parents and children and makes those funds available for "all stages" of foster care legal proceedings, i.e., the entire court process. This presumably begins when the case is first brought to the attention of the parent or child's attorney through the time the case is terminated following the child's return home, adoption, guardianship, or aging out of the court process.

The above language from the *Policy Manual* doesn't address availability of federal matching funds to pay for training of parents' and children's attorneys because federal statutes had already made clear that matching funds are available for their training. 42 USC 674(a)(3)(B). Under that statute, federal administrative matching funds for training also include training for CASA volunteers, guardians ad litem, and court staff.

Agency Precedent: These matching funds were already available for the cost of agency attorneys, so there is precedent regarding the process through which these funds are claimed. Courts and legal organizations should look to the agency to learn how they have documented and

claimed funding for attorneys representing the agency. If one's state has never claimed these funds, it may be necessary to look to a neighboring state.

Claiming Funds: Only the Title IV-E agency—and not courts or legal organizations—can claim the matching funds from the federal government. Note the highlighted wording at the beginning of the question preceding the policy change:

> *May a title IV-E agency claim* title IV-E administrative costs for attorneys to provide legal representation for the title IV-E agency, a candidate for title IV-E foster care or a title IV-E eligible child in foster care and the child's parents to prepare for and participate in all stages of foster care related legal proceedings?

Accordingly, to receive these matching funds, courts or a public entity providing legal representation must reach an agreement with the state child welfare agency. To put it another way, the agency must claim the funds from the federal government through an agreement with the court or public entity providing legal representation then pass through the funds under that agreement. Whether there is one or multiple contracts will depend on the state. In any case, under such an agreement, the courts or other public entities must document the costs of the attorneys in a format that allows the child welfare agency to meet federal reimbursement requirements.

The *Policy Manual* requires agencies, in passing through these funds, to respect the autonomy of attorneys representing parents and children:

> This policy is revised to allow the title IV-E agency to claim title IV-E administrative costs of *independent legal representation* by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in *all stages of foster care legal proceedings…*" (emphasis added).

The words "independent legal representation" make clear that, in claiming the matching funds, the agency cannot limit or compromise the independence of the attorney. And the words "all stages of foster care legal proceedings" mean the agency cannot limit the time or scope of legal representation.

Calculating the Amount of Federal Matching Funds to Cover the Costs of Attorneys for Parents and Children

Eligibility: Not all children in state supervised foster care are eligible for Title IV-E matching funds. Whether a child is eligible for such payments depends on the financial circumstances of the parents or relatives from whom the child was removed. A complicated set of criteria governs such eligibility.

Calculation Criteria: States cannot claim either category of Title IV-E matching funds for non-Title IV-E eligible children, either to pay caregivers or for administrative costs. This means under the new policy, the federal government will not pay for half the cost of representation for *all* foster children and their parents but will pay for the cost of child and parent legal representation based on a state's proportion of foster children eligible for Title IV-E.

Accordingly, to calculate the full amount of federal assistance available to help pay for foster children's and their parents' attorneys, it is necessary to know the proportion of foster children who are Title IV-E eligible. The percentage of states' foster children who meet Title IV-E eligibility requirements on a given day varies widely from state to state, ranging from less than 25% to over 75%. This percentage is sometimes referred to either as a state's Title IV-E "coverage rate" or "penetration rate."

To summarize, the overall amount of federal matching funds available for attorneys for parents and children is based on two factors: the Title IV-E "penetration" or "coverage" rate (percentage of children in care eligible for Title IV-E benefits) and the administrative cost match.

Sample Calculation: An oversimplified calculation of a hypothetical state's available reimbursement for the costs of foster children's and their parents' attorneys is as follows:

a. Calculate the total cost or representing foster children and their parents.

b. Multiply (a) by the state's Title IV-E coverage (penetration) rate for foster care.

c. Multiply (b) by 50%.

Here is an example involving both calculations:

State x spends $5 million in one year for legal representation of foster children and their parents. 40% of its foster children are eligible for Title IV-E reimbursements. Thus, the amount of available federal foster care matching funds for parent and child legal representation in state x can be calculated as: $5,000,000(.4)(.5) = $1,000,000. This means that under the new federal policy by paying $5,000,000 for child and parent legal representation from its own budget state x will now be able to contribute $6,000,000 to child and parent representation in total, representing a 20% increase in its investment in legal representation based on the additional federal support.

Federal Matching Funds to Help Pay for Training of Attorneys for Parents and Children

Federal matching funds to pay for the cost of representation should be distinguished from matching funds to pay for training of attorneys and their staff. Title IV-E matching funds for training of attorneys for parents and children have been available before the recent policy change, and the rate of reimbursement for training is 75 percent.

Eligiblity: As with matching funds for other administrative costs, the costs of training only apply to attorneys for Title IV-E eligible children.

Criteria: While claiming and calculating federal matching funds for training is complicated, courts can usually rely on child welfare agencies to help with technical requirements. However, courts and legal organizations do need to understand that Title IV-E funds can be claimed only to match state funds. That is, Title IV-E funds must be "matched" by state funds and not funds from other federal sources. For example, if a state is using Court Improvement Program funds (Title IV-B, Part 2) for training, it can't claim Title IV-E funds to match a percentage of that amount.

Sample Calculation: Here is a simplified calculation of federal matching funds for training of parent and children's attorneys in foster care cases:

a. Calculate the training costs for foster children's and their parents' attorneys.

b. Multiply (a) by the state's Title IV-E "coverage" rate for foster care.

c. Multiply (b) by 75%.

Consider the following hypothetical: State x spends $100,000 in a year for foster care training costs. The Title IV-E coverage rate for foster children is 40%. Therefore, federal matching funds available for training can be calculated as: $100,000(.4)(.75) = $37,500.

Creating a Process to Claim and Disburse Matching Funds

Only the state agency administering the Title IV-E State Plan (i.e., the state child welfare agency of an umbrella state agency) can claim the federal matching funds for parents' and children's attorneys. That is, the state agency must claim the funds on behalf of a state or local program providing representation.

Requirements: Accordingly, to receive the matching funds, the government program providing representation for parents and children must enter into an agreement with the state agency administering the Title IV-E plan. In the agreement, which may take the form of a Memorandum of Understanding, the public organization providing representation must agree to document the costs of representation in a way that satisfies the requirements of the Title IV-E agency. The Memorandum of Understanding should specify that attorneys for parents and children will provide independent representation of their clients, consistent with their ethical obligations as attorneys.

Sample Process: The process for reporting, claiming, and disbursing the Title IV-E matching funds for the representation of parents and children and training of attorneys can be something like:

a) the public entity providing legal representation of parents or children documents its costs to state agency administering Title IV-E;
b) the Title IV-E agency includes the sum in its larger claim to the federal government for Title IV-E matching funds;
c) the federal government pays the matching funds to the Title IV-E agency; and then
d) the Title IV-E agency disburses to the legal representation program its proportionate share.

A Memorandum of Understanding (MOU) can specify details of the process as they apply in the state. It can set forth a timeline for the steps of the process and can specify how state and federal legal requirements will be met. The MOU can also call for other forms of collaboration between the agency and the public entity providing representation, so long as such collaboration is consistent with the ethics of legal practice.

Practice Concerns

Some practical concerns courts and legal organizations should think about when seeking to partner with child welfare agencies to draw down new federal resources for child and parent counsel include:

1. How can we highlight the improved outcomes for children and families that arise from increased investments in child and parent counsel?
2. What different models of agreements with the Title IV-E agency may be best in your state?
3. What is the process to collect and disburse the funds?
4. How can we ensure the new funds are used to augment not supplant existing state and county investments in child and parent counsel?
5. How can we use the new funds as a catalyst for systemic improvements in representation, including models of multidisciplinary representation (attorney, social worker, investigator, peer advocate) and pre-petition representation. (Note that the costs of social workers to assist attorneys for parents and children can't be included in claims for Title IV-E administrative costs.)

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Related Links:

For information about why investing in child and parent counsel is so valuable, see the ABA Center on Children and the Law's Legal Representation Infographic.

For an overview of research on the impact of child welfare representation on child welfare outcomes, see the Family Justice Initiative's chart Research on Child Welfare Representation in Child Welfare Cases.

ABA President's recent statement commending the Child Welfare Policy change

[1] U.S. Department of Health & Human Services, Administration for Children & Families, Children's Bureau. "8.1B TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program" *Child Welfare Policy Manual.*

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
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TO: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E and IV-B of the Social Security Act, Indian Tribes and Indian Tribal Organizations, State Courts, and State and Tribal Court Improvement Programs.

SUBJECT: High Quality Legal Representation for All Parties in Child Welfare Proceedings

PURPOSE: To encourage all child welfare agencies, courts, administrative offices of the courts, and Court Improvement Programs to work together to ensure parents, children and youth, and child welfare agencies, receive high quality legal representation at all stages of child welfare proceedings.

LEGAL AND RELATED REFERENCES: Title IV-E and IV-B of the Social Security Act; the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106a et seq.); the Indian Child Welfare Act of 1978 (ICWA) (Pub. L. 95-608)

INFORMATION

The purpose of this information memorandum is to emphasize the importance of high quality legal representation in helping ensure a well-functioning child welfare system. This memorandum also highlights important research and identifies best practices and strategies to promote and sustain high quality legal representation for all parents, children and youth, and child welfare agencies in all stages of child welfare proceedings.

The Children's Bureau (CB) strongly encourages all child welfare agencies and jurisdictions (including, state and county courts, administrative offices of the court, and Court Improvement Programs) to work together to ensure that high quality legal representation is provided to all parties in all stages of child welfare proceedings.

I. Background

Courts play an integral role in the child welfare system. A court order is required to involuntarily remove a child or youth from the home and to find that child or youth dependent.

Once a child is removed from home and placed in out-of-home care, federal law requires that judges make a number of determinations about the safety of the home of removal, the welfare of the child, and that child's permanency plan in order for an agency to receive title IV-E funding.[1]

A court must review agency decisions about the family, the suitability of the child or youth's temporary placement, and the child's permanency plan that will result in family preservation, reunification, or another permanency goal. In order for a judge to make the best possible decisions for a family, it is critical that he or she receive the most accurate and complete information possible from and about all parties. Incomplete or inaccurate information renders judicial decision-making more difficult and may result in delays, increases in the length of time children and youth spend in care, additional costs to state or tribal government, and less beneficial decisions.

Numerous studies and reports point to the importance of competent legal representation for parents, children, and youth in ensuring that salient information is conveyed to the court, parties' legal rights are protected and that the wishes of parties are effectively voiced. There is evidence to support that 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.

II. Parties, Interests and Rights

The U.S. legal system is based on the premise that parties have a due process right to be heard and that competent legal representation and fair treatment produce just results. Parents, children and youth, and title IV-E/IV-B agencies are all parties to child welfare proceedings. Each may be required to provide sworn testimony under oath in court, each may be cross-examined and all are subject to court orders. All parties have significant liberties or liabilities at stake.

Parents

[1] 42 U.S.C. 672(a)(2)(A)(ii); 42 U.S.C. 671(a)(15); 45 CFR § 1356.21(b)(2).

The stakes are particularly high for parents in child welfare proceedings as their parental rights may be permanently severed, a right that the United States Supreme Court has identified as a fundamental liberty interest.[2] By any standard this marks a significant deprivation. Termination of parental rights is often referred to as the civil law equivalent of the death penalty.

There is consensus in the field that the rights at stake for parents and the complexity of legal proceedings in child welfare cases require all parents to have competent legal counsel. Parents' attorneys protect parents' rights and can be key problem solvers as counselors at law, helping parents understand their options, the best strategies for maintaining or regaining custody of their children and bringing cases to conclusion.

Children and Youth

Children and youth that have been removed from their families, even for a short period of time, experience a range of trauma and stress. Children and youth are often scared and confused and have incomplete understandings of what is happening to their families and what their future will hold. A recent study characterizes this uncertainty as "ambiguity" and provides evidence that ambiguity (this not knowing where he or she will live or what will happen to him or her) is a tremendous source of trauma.[3]

Federal law recognizes the importance of children having an advocate in judicial proceedings. In order to receive funding under the Child Abuse Prevention and Treatment Act (CAPTA) state grant, the governor of each state must provide an assurance that the state has provisions and procedures requiring "that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and (II) to make recommendations to the court concerning the best interests of the child."[4]

While CAPTA allows for the appointment of an attorney and/or a court appointed special advocate (CASA), there is widespread agreement in the field that children require legal representation in child welfare proceedings.[5] This view is rooted in the reality that judicial proceedings are complex and that all parties, especially children, need an attorney to protect and advance their interests in court, provide legal counsel and help children understand the process

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[2] *Santosky v. Kramer,* 455 U.S. 745 (1982).

[3] *See* Mitchell, Monique. (2016) *The Neglected Transition: Building a Relational Home for Children Entering Foster Care*. Oxford: Oxford University Press.

[4] 42 U.S.C. 5106a (b)(2)(B)(xiii).

[5] One of the findings of the Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-ChildRep), a project funded by CB, is that there is widespread agreement on the proper role of the child's attorney. The QIC-ChildRep review of the academic literature, national standards, conference recommendations and stakeholder opinion documents the evolution of lawyer representation of children and reveals an emerging consensus on nearly all aspects of the role and duties of the child's legal representative. Even the differences across the debate of client-directed versus best interests are narrowed. The QIC-ChildRep recommends that states adopt the 2011 ABA Model Act as the statutory structure for legal representation of the child. See Appendix A for descriptions of an exemplary specialty office and a statewide model of delivering child representation.

and feel empowered. The confidential attorney-client privilege allows children to feel safe sharing information with attorneys that otherwise may go unvoiced.

In addition to attorneys, children and youth also benefit from a lay guardian ad litem, such as a CASA. CASAs can make important contributions to child welfare proceedings through time spent getting to know the child's needs and reports to the court.

Child Welfare Agencies

Title IV-E/IV-B caseworkers and their supervisors must regularly appear in court. It is incumbent upon these caseworkers and supervisors to provide evidence that the agency has made reasonable efforts (or active efforts where cases are subject to Indian Child Welfare Act[6] (ICWA)) to prevent removals,[7] that it is contrary to the welfare of a child to remain in the home,[8] and that reasonable efforts have been made to finalize a permanency plan.[9]

Attorneys for public child welfare agencies play a crucial role in ensuring that the child welfare agency presents evidence of its diligence in working with families, that reasonable efforts are made, and that there are not undue delays in service provision, case planning or other vital services to keep families safe, together and strong. Agency attorneys can provide valuable oversight as to whether removal or return decisions conform to the proper standards. Such oversight is critical to ensuring judges have the information requisite to make statutorily required judicial determinations. Agency representation has also been identified as a safeguard against case workers engaging in the unauthorized practice of law.

State and Territorial Governments

Concern over the rights of children in care has resulted in federal class action lawsuits alleging civil rights violations. Such lawsuits cost state governments hundreds of millions of dollars in legal defense expenses. It stands to reason that high quality legal representation for all parties may help ensure greater system accountability, thereby reducing the likelihood that such lawsuits are filed in the first place.

Tribes and Tribal Governments

In cases involving an Indian child, it is critical that the right of tribes to intervene and participate in proceedings under ICWA is honored and that an attorney or other representative of the tribe be noticed, present if the tribe deems it appropriate, or otherwise able to fully represent the tribe of which the child is a member or eligible for membership.[10] As sovereign nations, tribes have a statutorily protected interest[11] in member or potential member children who are party to state child welfare proceedings, and it is critical that the tribal voice be heard.

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[6] 25 U.S.C. 1912(d).
[7] 42 U.S.C. 672(a)(2)(A)(ii).
[8] *Id.*
[9] 42 U.S.C. 671(a)(15); 45 CFR § 1356.21(b)(2).
[10] 81 FR 3886/ 25 CFR part 23; see also, the BIA's 2016 ICWA Guidelines (p.8, A.3, re: 23.133). Note that tribes, as sovereign nations, should identify their own representatives in state court proceedings, whether or not the representative is a lawyer. https://www.bia.gov/cs/groups/public/documents/text/idc2-056831.pdf
[11] 25 U.S.C. 1901(3).

Failure to provide a meaningful opportunity for tribes to participate in cases involving Indian children is a violation of ICWA[12], may lead to unnecessary long stays in care, increased foster care costs, appeals, and unnecessary trauma for Indian children and youth.

III. Increases in Procedural Justice, Fairness and Engagement

State intervention in the lives of families, even when absolutely necessary, is a traumatic experience for children and parents alike. Removal and family separation based on allegations of abuse or neglect typically represent the most difficult and vulnerable time a family may face. During this time, it may be very difficult for a parent to fully trust an agency caseworker. A parent also may not fully understand how the child welfare system works, the relevant laws and his or her legal rights.

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.[13] 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.[14]

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.[15] 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

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[12] 25 CFR 23.111.

[13] *See generally* Leben, S. & Burke, K. (2007-2008) Procedural fairness: A key ingredient in public satisfaction. *Court Review*, *44,* 4-17; Tyler, T. & Zimerman, N. (2010) Between Access to Counsel and Access to Justice: A Psychological Perspective. *Fordham Urban Law Journal, 37,* 473-507; Tyler, T. (2007-2008) Procedural justice and the courts. *Court Review, 44,* 26-31Tyler, T. (1990). *Why People Obey the Law: Procedural Justice, Legitimacy, and Compliance.* New Haven: Yale University Press.

[14] Tyler, T. & Zimerman, N. (2010) Between Access to Counsel and Access to Justice: A Psychological Perspective. *Fordham Urban Law Journal, 37,* 473-507.

[15] Exploring Outcomes Related to Legal Representation for Parents Involved in Mississippi's Juvenile Dependency System, Preliminary Findings, National Council of Juvenile and Family Court Judges (2013) *available at: https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=266785*

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.[16]

IV. Early Appointment of Counsel, Improved Case Planning, Expedited Permanency and Cost Savings

There is a growing body of empirical research linking early appointment of counsel (at or prior to a party's initial appearance in court) and effective legal representation in child welfare proceedings to improved case planning, expedited permanency and cost savings to state government.[17] Early appointment of counsel allows attorneys for parents and children to be involved from the very beginning of a case. Attorneys can contest removals, identify fit and willing relatives to serve as respite care providers, advocate for safety plans and identify resources, all of which may help prevent unnecessary removal and placement. Where removal is necessary attorneys for parents and children can be actively involved in case planning, helping to craft solutions that address their client's needs and concerns and expediting reunification or other permanency goals.

The Quality Improvement Center on the Representation of Children in the Child Welfare System (hereinafter, QIC-ChildRep), a randomized control trial funded by the CB, provided strong evidence that the early appointment of a well-trained attorney for children and youth expedites permanency.[18] Children represented by attorneys trained and practicing under the QIC-ChildRep model in Washington State were 40 percent more likely to experience permanency within the first six months of placement than children represented by non QIC-ChildRep attorneys.[19]

A number of smaller, less rigorous studies lend further support to links between early legal representation and expedited permanency. A pilot study in Texas aimed at earlier appointment of attorneys for parents found that cases where attorneys were appointed within ten days of petition filing had more permanent outcomes (e.g., reunification) than cases in which attorneys were appointed later.[20] A study examining foster care data from multiple jurisdictions found that the

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[16] Conference of Chief Justices and Conference of State Court Administrators (2013) Resolution 12: In Support of State Supreme Court Leadership to Promote Procedural Fairness. (http://ccj.ncsc.org/~/media/microsites/files/ccj/resolutions/07312013-support-state-supreme-court-leadership-promote-procedural-fairness-ccj-cosca.ashx).

[17] *See* Thornton & Gwin (Spring 2012) *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*, 46 Fam Law Quarterly 139.

[18] *See* Duquette *et. al*., (2016) *Children's Justice: How to Improve Legal Representation of Children in the Child Welfare System,* ABA Publications; *see also* QIC findings: Robbin Pott (2016), *The Flint MDT Study,* in CHILDREN'S JUSTICE.

[19] Olebeke, Zhou, Skles & Zinn, (2016)Evaluation of the QIC-ChildRep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System, Chapin Hall. *Available at: http://www.chapinhall.org/qicreport*

[20] Wood, S. M., Summers, A., & Duarte, C.S. (2016). Legal Representation in the Juvenile Dependency System: Travis County, Texas' Parent Representation Pilot Project. *Family Court Review, 54,* 277-287.

presence of the mother's attorney at the preliminary protective hearing (emergency removal hearing) predicted a higher likelihood of reunification.[21]

There is also evidence that legal representation helps ensure more thoughtful and effective case planning. A study conducted in Palm Beach Florida found that children's attorneys practicing in compliance with the practice model resulted in more personally tailored and specific case plans and services, as well as expedited permanency.[22]

Both parents' attorneys and children's attorneys can be helpful in addressing collateral legal issues that may leave families vulnerable, such as housing, employment, immigration, domestic violence, healthcare and public benefits issues -- one or any combination of which may contribute to bringing families into contact with the child welfare system. Such efforts may help prevent children from entering foster care or help children return home sooner.

High quality agency representation brings a number of clear benefits to a jurisdiction's child welfare system. Consistent statewide quality legal representation helps individual caseworker practice and overall statewide performance. More consistent advice and consultation with counsel helps ensure child welfare agencies policies and procedures are followed consistently across the state and that all federal child welfare requirements are met. Agency effort has a direct result on judicial decisions, which in turn directly affects federal monitoring and continuous quality improvement efforts such as the title IV-E foster care eligibility reviews and Child and Family Services Reviews (CFSR).

Agency representation provides legal guidance to child welfare agencies that helps caseworkers meet legal standards governing caseworker visits, evidentiary burdens, compliance with court orders, and existing law. Consistent and adequate representation is likely to reduce the number of court hearings required and make court hearings more focused and efficient. Consistent agency representation also helps child welfare agencies avoid over-intervention while still protecting those children at risk.

The most rigorous research effort examining agency representation to date found that agency attorneys who represented the agency as a client (the agency representation model) and received specialized training achieved permanent placement decisions for children on average 250 days more quickly than attorneys external to the agency (also known as the prosecutorial model) representing the state [23]. Data also indicated significant state savings because of the reduction in time children spent in temporary foster care placements.

V. Standards of Practice, Specialization, and Quality Assurance

Leading national organizations have long emphasized that the gravity of the interests at stake in child welfare cases require well-trained legal representation for all parties at all stages of child

[21] Wood., S.M., & Russell, J.R. (2011). Effects of parental and attorney involvement on reunification in juvenile dependency cases. *Children and Youth Services Review, 33,* 730-1741.
[22] *See* Zinn, A. & Slowriver, J. (2008), Expediting Permanency: Legal Representation for Foster Children in Palm Beach County. Chapin Hall Center for Children at the University of Chicago *available at https://www.chapinhall.org/research/report/expediting-permanency*
[23] *See* Herring, D. (1993). Legal Representation for the State Child Welfare Agency in Civil child Protection Proceedings: A Comparative Study. Tol L. Rev. 603

welfare proceedings. Most notably, the ABA has passed national standards of practice for parent attorneys, attorneys for children and youth, and counsel for public child welfare agencies in child welfare proceedings.[24] The standards have been widely supported, adopted by many state bar associations and written into court rules and legislation across the country. Under the standards, attorneys practicing child welfare law are required to have a minimum number of child welfare law training hours and provide practice guidance to ensure attorneys represent their clients ethically. CB strongly encourages all states to adopt standards of practice for parents, children and youth, and the child welfare agency to help ensure all parties receive high quality legal representation.

CB has invested in the ABA accredited Child Welfare Legal Specialist (CWLS) Certification program administered by the National Association of Counsel for Children (NACC), which has resulted in over 600 attorneys and judges around the country obtaining CWLS certification.[25] Certification requires attorneys to complete a self-directed course of study, submit work product, and take a test to demonstrate knowledge of applicable child welfare law and practice. CB strongly encourages all attorneys and judges practicing child welfare law to obtain CWLS certification. CB also strongly encourages all Court Improvement Programs, courts, and bar associations to work together to support attorneys and judges that practice child welfare law to obtain CWLS certification.

The QIC-ChildRep provided empirical evidence that specialized child welfare law training and coaching can positively impact attorney behavior and result in more effective representation of children. QIC-ChildRep lawyers changed their behavior to conform to the practice model, resulting in greater contact with clients, increased communications with other important collateral contacts and were more actively involved in conflict resolution and negotiation activities.

Related research has determined that training can impact judges' behavior on the bench. This may hold true for attorney practice as well. A recent study completed by the National Council of Juvenile and Family Court Judges (NCJFCJ) lends further support to the importance of training legal professionals.[26] The study, which looked at the effect that judicial participation in NCJFCJ's Child Abuse and Neglect Institute had on judicial practice in court hearing revealed that, post-training, judges were more likely to use specific strategies to engage parents in the court process. Judges also asked more questions after the training and were more likely to discuss child well-being and services that would allow the child to return home. This indicates the training was effective in increasing engagement of parents in the process and improving the overall quality of dependency hearings.

VI. Caseload, Ethics, and Quality Legal Representation

The larger the caseload, the less a lawyer can do for any individual client. The NACC recommends a standard of 100 active clients for a full-time attorney.[27] The NACC based this

[24] *Available at*: http://www.americanbar.org/groups/child_law/tools_to_use.html
[25] *Available at*: http://www.naccchildlaw.org/?page=certification
[26] Child Abuse and Neglect Institute Evaluation: Training Impact on Hearing Practice (2016) *available at*: http://www.ncjfcj.org/CANI-Report-2016
[27] National Association of Counsel for Children, *Child Welfare Law Guidebook,* 2006, at 54.

recommendation on a rough calculation that the average attorney has 2000 hours available per year and that the average child client would require about 20 hours of attention in the course of a year.[28] In the federal class action lawsuit filed against the state of Georgia, *Kenny A. v. Deal*, one of the allegations was that overly large caseloads for children's attorneys violated children's constitutional rights to competent legal counsel. The court heard expert testimony from NACC regarding caseload size. Evidence gained through the testimony became a key consideration in the court's finding that foster children have a right to an effective lawyer who is not burdened by excessive caseloads in dependency cases.

Other research and guidelines recommend smaller caseloads. In the QIC-ChildRep study, the adjusted caseload of the sample was 60 cases. That is, even when child representation occupied only a portion of a lawyer's practice, when the number of cases is adjusted for the percentage of effort required for child representation, the typical caseload was approximately 60 cases.

Data gained from the QIC-ChildRep shows benefits to smaller caseloads.[29] The QIC-ChildRep asked attorneys to do much more than appear in court, the theory being the more an attorney knows about the facts of the case and the competencies and challenges of his or her client the better he or she will be able to represent that client and that proper representation requires considerable work and advocacy outside of the courtroom. For child clients, where it is critical to observe the child in school and in placement settings and regularly communicate with collateral contacts such as teachers, foster parents and service providers, this could require several hours of effort a month per client. It is also the child's attorney's duty to independently verify the facts of the case.

A 2008 caseload study by the Judicial Council of California recommended a caseload of 77 clients per full-time dependency attorney to achieve an optimal best practice standard of performance.[30] The Massachusetts Committee for Public Counsel Services, which provides counsel for children and parents in dependency cases, enforces a caseload of 75 open cases.[31] In a very detailed systematic study, a Pennsylvania workgroup carefully broke down the tasks and expected time required throughout the life of a case and matched that to attorney hours available in a year. They concluded that caseloads for children's lawyers should be set at 65 per full time lawyer.[32]

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[28] NACC, Pitchal, Freundlich, and Kendrick, *Evaluation of the Guardian ad Litem System in Nebraska,* (December 2009) at 42-43, *available at* http://c.ymcdn.com/sites/www.naccchildlaw.org/resource/resmgr/nebraska/final_nebraska_gal_report_12.pdf

[29] The QIC-Child Rep found a one-standard-deviation increase (20 cases) in the size of dependency caseload is associated with a 22 percent decrease in the monthly rate of investigation and document review and a 9 percent decrease in the monthly rate of legal case preparation activities.

[30] CA Dependency Counsel Caseload Standards A Report To The California Legislature April 2008 by the Judicial Council of California Administrative Office of the Courts Center for Families, Children & the Courts, *available at* http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/articles.htm

[31] Massachusetts Policies and Procedures. https://www.publiccounsel.net/private_counsel_manual/CURRENT_MANUAL_2010/MANUALChap5links3.pdf

[32] 2014 Pennsylvania State Roundtable Report: Moving Children to Timely Permanency, available at http://www.ocfcpacourts.us/childrens-roundtable-initiative/state-roundtable-workgroupscommittees/legal-representation/state-roundtable-reports

Given the rights at stake for parents in dependency cases it is vital for parent attorneys to have reasonable caseloads. Ethical representation of parents in dependency proceedings requires considerable time and attention out of court. Legal scholars, practitioners and parents that have been involved with the system agree that it is the work done out of court that makes the biggest impact in dependency cases. Building trusting attorney-client relationships, being a counselor at law that helps a parent understand the system, working together to identify acceptable respite or substitute care options, developing safety plans, attending agency planning meetings, and identifying appropriate services all require a tremendous amount of time.

The higher the caseload, the less time an attorney will have to represent her client. Excessive caseloads make it harder for all attorneys to meet with clients, learn the facts of each particular case and prepare for court. This may result in increased frequency of scheduling conflicts, higher numbers of requests for continuances, undue delays in case resolution, and poor representation for all parties. The costs associated with each consequence are high for families and jurisdictions alike.

VII. Models of Delivering Legal Representation for Child Welfare Proceedings

There are three predominant models of delivering legal representation for children and parents: centralized state or county government offices; independent offices that specialize in child welfare law; and private practitioners that are either appointed by judges or assigned to cases as members of a pool of attorneys who handle child welfare cases in a jurisdiction. The vast majority of attorneys representing children and parents fall into the last group, private practitioners. For this group of attorneys, child welfare law often accounts for only a portion of their practice.

Some government and private specialty law offices utilize a multi-disciplinary team approach, which pairs or provides attorneys with access to independent social workers and/or includes a peer parent advocate. Evaluations of models that employ these types of teams are yielding very positive results. Regardless of the type of attorney or model of representation -- standards of practice, reasonable caseloads, ongoing training, connections to support (such as social workers, peer parent advocates or investigators) and effective oversight are important factors in ensuring high quality legal representation. See Appendix A for descriptions of exemplary models of delivering parent and child representation.

Parent Representation

The ABA Standards of Representation for Parents in Child Welfare Proceedings provide clear guidance that is applicable to all models of delivering parent representation. The standards emphasize the need for parent attorneys to be both counselors at law and zealous legal advocates. The counselor at law role requires an attorney to take the time to learn and understand their client's life circumstances, including their strengths and needs and the resources he or she has available. Such information is identified as critical to helping best represent the client.

The standards further articulate that helping clients understand when and how it is most important to cooperate with the child welfare agency is also crucial. Under the standards,

traditional, zealous legal representation is necessary, but insufficient to achieve the best outcomes for parents and families. Rather, the complexities of child welfare proceedings require the parent attorney to simultaneously assume multiple roles including: advisor, teacher and advocate. It is through this combination of roles that comprehensive representation and the best possible outcome are achieved.

CB strongly encourages all jurisdictions to provide legal representation to all parents in all stages of child welfare proceedings. CB further encourages all jurisdictions to consider providing such representation as part of a multi-disciplinary team.

Child Representation

Regardless of the model of child representation, the QIC-ChildRep approach is a useful tool for states and individual practitioners to consider. The approach is based on an enhanced version of the ABA Standards of Legal Representation for Children and aligns very closely with procedural justice research. The model calls for proactive lawyering, advocacy and problem-solving.

The model encourages attorneys to utilize six core skills: (1) enter the child's world; (2) assess child safety; (3) actively evaluate needs; (4) advance case planning; (5) develop a theory of the case; and (6) advocate effectively.[33] Taken together, the core skills empower attorneys to have a well-informed understanding of the particular strengths, needs, and resources of the child's family, and an understanding of the child's wishes (where they are able to be expressed). It is this vital individual child and family information that allows the attorney to take an active role in representing the child in case planning and to effectively advocate on his or her behalf.

While the QIC-ChildRep was developed specifically for child representation and the study looked exclusively at child representation, with minor modification the six core skills may be equally valuable for parent representation.

CB strongly encourages all jurisdictions to provide legal representation to all children and youth at all stages of child welfare proceedings. CB further encourages all jurisdictions to consider providing such representation as part of a multi-disciplinary team.

Child Welfare Agency Representation

Many states do not currently provide adequate representation to the state's child welfare agencies or their contract agencies. The agency may be represented differently from county to county, or not directly at all. Consequently, the agency is often deprived of the benefits of having legal guidance in the investigation and disposition of their cases. Absent effective legal counsel, caseworkers lack the knowledge to be effective in court and may unwittingly fall into unlawful practice of law.

There are two basic models of representation for state and county government in child welfare proceedings: the agency representation model and the prosecutorial model. As the names

[33]QIC ChildRep Model and Core Skills *available at*: http://www.improvechildrep.org/DemonstrationProjects/BestPracticeModelSixCoreSkills.aspx

suggest, the agency representation model provides for an attorney or office of attorneys that represents the public child welfare agency. Under this model, the attorney(s) provide legal counsel and advice to the child welfare agency leadership. This includes counsel on specific cases, overall legal approaches to the work, and policy. The agency attorney also represents the child welfare agency in court. Agency attorneys prepare all legal documents, filings and petitions for the agency and work closely with agency caseworkers to prepare them for court. Agency attorneys also play a critical role in holding case workers accountable. It is important to note, however, that the agency attorney does not represent the caseworker individually.

Under the prosecutorial model, the attorney represents the people or the state, much as a district or county prosecutor would in a criminal case. The prosecutorial model treats the agency as the complaining witness, as opposed to a client. Often attorneys operating under the prosecutorial model are employed by the state or county district attorney's office. Some attorneys practicing under this model may also practice criminal law; other offices exist as a separate unit within the prosecutor's office and handle exclusively child welfare cases. Under this model, the public child welfare agency does not have direct legal representation. This approach is not favored today.[34]

The agency representation model finds strong support in the ABA standards, existing research and efforts to protect against the unlawful practice of law. States will find a helpful resource in the ABA Standards of Practice for Lawyers Representing Child Welfare Agencies.

A 2016 study of dependency representation in Oregon identified inconsistent state and agency representation, a lack of uniform practice, and complicated financial models as challenges to timely and effective case planning and case management, stating that "obstacles to adequate and effective representation for all parties stand in the way of better outcomes for Oregon's children and families."[35]

Furthermore, the Oregon report found that a model of government representation that provides full representation for the agency in all hearings and out-of-court activities will ultimately eliminate the risk of unlawful practice of law by child welfare employees in the courtroom, and increase outcomes for children and families in Oregon. This recommendation would eliminate "the state" as a party to dependency cases and ensure the child welfare agency is fully represented and has access to consultation with counsel.

CB strongly encourages all jurisdictions to implement the agency representation model to ensure consistent legal representation that supports child welfare agencies to meet all federal requirements.

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[34] *See* Silverthorn, B. (2016) *Agency Representation in Child Welfare Proceedings,* Child Welfare Law and Practice: Representing Children, Parents and State Agencies in Abuse, Neglect, and Dependency Cases. Bradford

[35] *See* Oregon Task Force on Dependency Representation Report, July, 2016, *available at* http://courts.oregon.gov/OJD/docs/OSCA/JFCPD/Juvenile/EYES-2016/Dependency%20Representation%20Task%20Force%20Report%20(full).pdf

VIII. Best Practice Considerations

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 below 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 below.

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.
- Require mandatory initial child welfare training 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.
- Institute mandatory annual training requirements for parents' attorneys, children's attorneys and agency attorneys. Child welfare law and regulations and court rules change regularly at the state and federal level. It is important to have an effective way to keep all attorneys up-to-date. Annual update or "booster shot" trainings are one effective way to ensure all practitioners are kept current in law and practice.
- Support adequate payment and benefits to "professionalize" this type of law practice, and move from a contract system with competing priorities to an employment system like other indigent and state agency representation.
- Support a payment system for parent and child representation that is designed to promote high quality, ethical legal representation and discourages overly large caseloads.

Attorney Best Practices to Provide High Quality Legal Representation

- 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 hearing 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 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.

IX. Conclusion

The child welfare system is intended to keep families safe, together and strong, and where that is not possible to find the next best option for children and youth. To realize this potential it is critical that children and families experience the system as transparent and fair, one in which rights are protected and options are known, co-created and understood. 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. Moreover, research shows that legal representation for all parties in child welfare proceedings is clearly linked to increased party engagement, improved case planning, expedited permanency and cost savings to state government. CB strongly encourages all jurisdictions to work together to ensure all parties receive high quality legal representation at all stages of dependency proceedings.

Inquiries: CB Regional Program Managers

/ s /

Rafael López
Commissioner
Administration on Children, Youth & Families

Attachments:
A - Models of Delivering Parent Representation
B - CB Regional Office Program Managers

RESOURCES

ABA Standards of Representation for Parents, Children, and Child Welfare Agencies
http://www.americanbar.org/groups/child_law/tools_to_use.html

NACC Child Welfare Legal Specialist Certification (CWLS)
http://www.naccchildlaw.org/?page=certification

Quality Improvement Center for the Representation of Children in the Child Welfare System. (QIC-ChildRep) Practice Model
http://www.improvechildrep.org/DemonstrationProjects/QICChildRepBestPracticeModel.aspx

NCJFCJ Enhanced Resource Guidelines
http://www.ncjfcj.org/ncjfcj-releases-enhanced-resource-guidelines

Child Welfare Capacity Building Center for Courts
https://capacity.childwelfare.gov/courts/

Models of Delivering Parent Representation

The Washington State Office of Public Defense (OPD) provides legal representation to indigent parents in child welfare proceedings. The program was created more than a decade ago following an investigative report showing that indigent parents throughout the state typically received poor legal representation in dependency and termination cases. Now operating in 83% of the state, the Parents Representation Program provides state-funded attorneys for indigent parents, who have legally mandated rights to counsel. These attorneys are contracted by OPD, which oversees performance, limits caseloads and provides resources.

The OPD designed and implemented standards specifically for dependency and termination case representation, uniquely blending a counselor at law approach with traditional practice techniques. The standards require OPD contract attorneys to meet and communicate regularly with their parent clients throughout the case, ensure their clients have adequate access to services and visitation, prevent continuances and delays within their control, prepare cases well, and attempt to negotiate agreements and competently litigate if no agreement is reached. Reasonable caseloads are set at no more than 80 open cases per full-time attorney (equivalent to about 60 parents).

The program has been favorably evaluated six times. In 2010, in consultation with the Washington State Center for Court Research, OPD published a report on the court records and court orders in 1,817 dependency cases prior to and after implementation of the Parents Representation Program. The comparison found significant differences in the rate of reunification. Cases commenced after the program was implemented achieved permanency 36.5% more often than those that were commenced prior to representation under the program began.

A 2011 study by the University of Washington, which conducted the study at DSHS's request, found that after the Parents Representation Program was instituted in various counties, cases were decided between one month and one year faster. The study concluded that the program is helpful in getting children out of foster care and into permanent homes that it should be extended statewide. The reduction of time that children spend in care has been attributed as saving the state hundreds of thousands of dollars.

The Detroit Center for Family Advocacy provides legal and social work advocacy for parents to ensure that children do not needlessly enter foster care. The Center receives referrals directly from child welfare agencies to help at-risk families resolve legal issues that directly impact the child's safety in the home. For example, a mother may need assistance resolving a housing issue against a landlord. A domestic violence victim may need assistance obtaining a restraining and child custody order against an abusive ex-husband. Or a father may need an advocate to ensure that a school is providing the right services to a child with special needs. The model is based on a fundamental belief that early intervention by a multidisciplinary legal team can prevent kids from unnecessarily entering foster care.

A three year evaluation conducted between 2009 and 2012 confirmed the efficacy of the model. During the evaluation period, the Center served 110 children for whom the child protective services had substantiated child abuse or neglect. The CFA was to use legal tools and

advocacy, supported by social workers, to safely prevent removal. Not one of those children entered foster care—reducing trauma to the child and family and also avoiding thousands of dollars in costs for each child. The Center achieved its legal objectives in 98.2 percent of its prevention cases, and the multidisciplinary approach to addressing problems ensured that these children were able to remain in their homes.

The Center for Family Representation (CFR) in New York is another example of a comprehensive parent representation model that is achieving notable outcomes. The CFR model provides every parent with an attorney, a social worker, and a parent advocate. Parent advocates are parents who themselves once faced family court prosecution, had their children removed, and were able to successfully reunify their families. Under the CFR model, every parent is surrounded by a team that works together to problem-solve, identify resources, strengths and needs and provide counsel and advice. By combining in-court litigation with out-of-court social work referrals and case-management, individualized service planning, and parent mentoring, CFR dramatically improve outcomes for our families. Former clients of CFR report very high decrees of satisfaction with CFR representation, siting it as essential to their successes and communicating that they truly felt their voices were heard and needs effectively addressed.

Models of Delivering Child and Youth Representation

KidsVoice in Pittsburgh, Pennsylvania is recognized as a national model for multi-disciplinary and holistic approach to child advocacy and legal representation. They are a non-profit agency that advocates in court and in the community to ensure safe and permanency homes for abused, neglected, and at-risk children. Each year, KidsVoice represents nearly 3,000 children involved in the child-welfare system in Allegheny County's Juvenile Court. Child advocacy at KidsVoice goes beyond the traditional child welfare and juvenile court arenas. The staff advocates for clients in educational, medical, mental health and Social Security matters, as well as providing representation for minor criminal citations and for expungement of delinquency records. They also assist the older clients as they pursue college or vocational training opportunities and transition to living independently. Every client is represented by both an attorney and a Child Advocacy Specialist (a social service professional with expertise in social work, mental health, education or child development).

The Wyoming Guardians Ad Litem Program is a state- and county-funded centralized state office that trains and supervises all attorneys representing children in Juvenile Court in the state. In 2008, the program adopted rules and policy setting practice standards and addressing other related quality indicators like the presence of children and youth in court proceedings, set caseload maximums for all program attorneys, began specialized training for the program attorneys, instituted a quality assurance process, and a multi-tiered evaluation process for program attorneys. From 2008 to 2012, the program underwent an overhaul of the program and brought many of the attorney positions in-house as full-time attorneys or state employees, drastically reducing the number of independent contract attorneys. In 2015, the program released an on-line cases management system to better track compliance with standards, timeliness of proceedings, and outcomes for children and youth.

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2	**Region 2 - New York City** Alfonso Nicholas alfonso.nicholas@acf.hhs.gov 26 Federal Plaza, Rm. 4114 New York, NY 10278 (212) 264-2890, x 145 **States and Territories:** New Jersey, New York, Puerto Rico, Virgin Islands	7	**Region 7 - Kansas City** Deborah Smith deborah.smith@acf.hhs.gov Federal Office Building, Rm. 349 601 E 12th Street Kansas City, MO 64106 (816) 426-2262 **States:** Iowa, Kansas, Missouri, Nebraska
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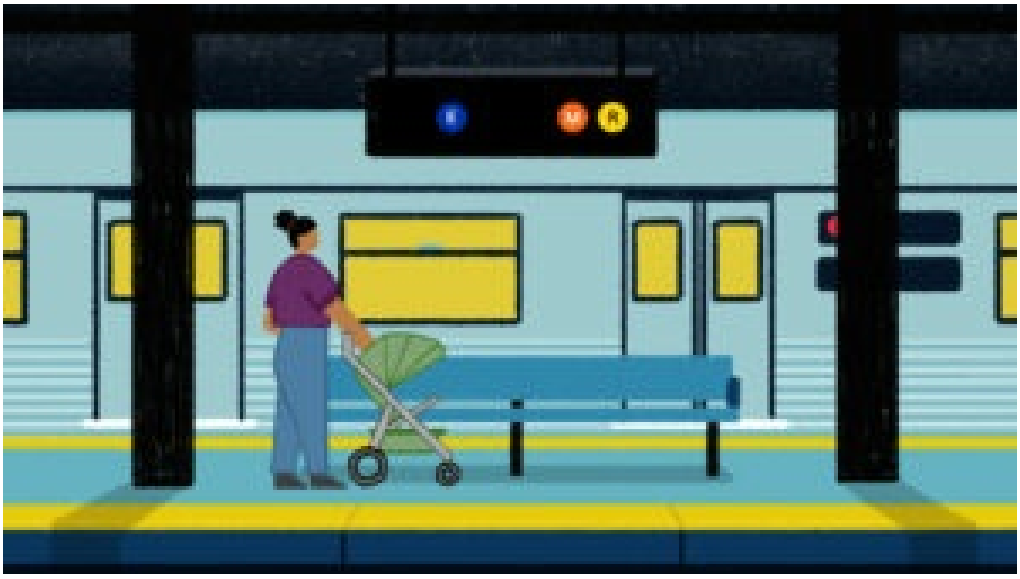
5	**Region 5 – Chicago** Kendall Darling kendall.darling@acf.hhs.gov 233 N. Michigan Avenue, Suite 400 Chicago, IL 60601 (312) 353-9672 **States:** Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin	10	**Region 10 – Seattle** Tina Naugler tina.naugler@acf.hhs.gov 701 Fifth Avenue, Suite 1600, MS-73 Seattle, WA 98104 (206) 615-3657 **States:** Alaska, Idaho, Oregon, Washington

This 23-Year-Old's Newborn Was Taken by the Government. Here's How She Got Her Back.

chronicleofsocialchange.org/news-2/trump-admin-parents-foster-care-court-vanessa/37924

Michael Fitzgerald, Daniel Heimpel

September 30, 2019



Credit: Christine Ongjoco / Chronicle of Social Change

At around nine o'clock on a Tuesday morning, two days after giving birth to her second child, Vanessa left a hospital in Queens, New York, and boarded the subway. She was headed to the borough's courthouse on a mission: to regain custody of her newborn daughter.

The baby, Marla, was being held in the hospital nursery due to a previous allegation of neglect against Vanessa received by city authorities.

Shortly after Vanessa — who requested her name and those of her children be changed to protect her employment prospects — had arrived at the hospital in labor, a nurse found out she had another child already in foster care. That was followed by a call to New York City's Administration for Children's Services (ACS), which quickly determined the baby should join Vanessa's son, Lawrence, for safety's sake. Marla would remain separated from her mother while the agency filed a petition in family court and figured out who could care for the newborn.

"It was tough," Vanessa said recently, the 23-year-old's voice cracking as she recalled that day in the spring of 2017. "I had no idea what I was getting into — I didn't know anything like what happened could happen to a new mother."

The American child welfare system's reasoning in such cases is usually a secret to the public,

hidden in confidential court records, and confounding to accused parents. Vanessa said the neglect allegation stemmed from her spending a night in jail — and thus away from Lawrence — for reasons she declined to discuss, but that her history of cannabis use also eventually factored into the government's case against her.

One thing was clear: Vanessa's future as a parent was at risk, and she needed a lawyer. The J.C. Penney clerk was living in a homeless shelter, and would probably need a social worker, too.

Unlike most parents in these situations, however, Vanessa already had both, courtesy of a local nonprofit. And with an assist from an unlikely source — the Trump administration — New York City's relatively generous model for helping parents who face loss of their kids could soon spread more widely around the country.

Vanessa's lawyer and social worker were provided for free by a legal aid nonprofit called the Center for Family Representation (CFR), which employs lawyers, social workers and peer advocates to support parents facing child welfare cases. These arrangements aren't rare in New York City — three other nonprofits, known as interdisciplinary legal offices, are providing a similar mix of services: Bronx Defenders, Neighborhood Defender Service of Harlem and Brooklyn Defender Services.

By contrast, across most of the country, many lawyers who work these cases often do so by themselves or in small private law firms, where they're paid hourly by their state. Support and training can be inconsistent, making the job harder no matter the quality or experience of the lawyer, according to conversations with many attorneys who do this work. And the parents in question are often only able to seek social workers on a case-by-case basis, through cumbersome requests filed with the courts.

"We believe that to wrap these services around a legal team is the best way to serve a family, resulting in the best outcomes, especially safe reunification of families whose children are in foster care," said Mimi Laver, who used to work in the City of Philadelphia's legal office defending foster care placements, but has become a staunch advocate of improving parent legal defense with the American Bar Association's Center on Children and the Law.

The growing community of parent advocates think they've played an outsized role in the precipitous decline in New York City's foster population, from more than 40,000 in the 1990s to around 8,000 today. A vastly disproportionate share of those kids and their families are black or brown, as is the case nationally, and the lawyers and their staff at places like CFR see themselves as part of a social justice movement to address that.

"Black Lives Matter hasn't yet quite happened to our field, but it will, and it must," said Martin Guggenheim, a CFR board member and a law professor at New York University, speaking to a conference for parents' lawyers in Washington, D.C., in the spring.

Meanwhile, federal policymakers quietly made a major regulatory change last year to the Social Security Act, which authorizes billions in federal spending on child welfare, in addition to the famous retirement program. Previously, those child welfare funds were mostly only available for services for foster youth. But a small wording tweak to an obscure Children's Bureau policy manual opens up potentially hundreds of millions of dollars in new federal funding to boost parent legal representation.

That money could lower caseloads for these attorneys, but also expand access to social workers, peer support and other perks for parents everywhere. Even ACS — which declined to comment on Vanessa's case, per its rules for confidentiality for families — supports the unique legal organizations they are often battling in court.

"ACS values the role of parents' attorneys. They are critically important in cases, and they are also partners with whom we collaborate on a range of policy and practice matters," said Alan Sputz, the ACS Deputy Commissioner who oversees the agency's legal team. "The approach to parent representation in New York City is a model for the rest of the country, and recent research has demonstrated that our collaboration with parents' attorneys is effective."

But change will only happen if other local officials take up the feds' offer for money, which means they have to agree parents accused of mistreating their kids — almost all of them poor, and many of them people of color — deserve that special treatment. That isn't a given. When the state offered Rochester's upstate Monroe County $2.6 million to boost parent legal representation last year, the county government refused.

In Vanessa's case, early meetings with government caseworkers didn't go well, even though she had outside help.

"At first, I didn't like the programs they gave me, they were useless," she said. "But a drug treatment program made a huge difference and [CFR] helped me see the value in getting through all that. It was excruciating, doing this and not being able to see my kids."

The real action between parents and child welfare agencies doesn't always happen in the courtroom, but in less-structured outside meetings, called by names like "child safety conferences." That's where many brass-tacks negotiations over a family's future and the government's role take shape.

"In our cases, a parent meets an attorney and a social work staff member on the very first day the case is in court. The client has two team members assisting simultaneously," said Michele Cortese, executive director and founding partner of the Center for Family Representation.

Anytime ACS files a court petition seeking to take custody of an allegedly neglected or abused child, New York City's family courts assign a lawyer to meet parents who can't afford

one on the day of their first appearance. But without a social worker, Vanessa would have been on her own in those out-of-court meetings.

“Our job is to advocate for our clients, like a lawyer, so they don’t feel alone — but advocate outside the courtroom while the attorney advocates inside the courtroom,” said Eden Karnes, the CFR social worker who worked with Vanessa.

Karnes attended most of Vanessa’s court hearings, and meetings between city government workers and Vanessa. Her primary goal was to ensure ACS offered the young mother appropriate support services, and to help convince her to engage in those services, despite the frustration and instability wracking her life.

“Even if clients want help, they don’t always want to acknowledge to ACS anything was wrong. Our social workers help them through this often,” Cortese said.

Having a social worker on your legal team guarantees the sympathetic response a lawyer can’t always offer — and truly independent, confidential advice you can’t get from social workers working for the city or one of its contracting agencies. Which can sometimes make the job harder for the foster care system’s frontline staff.

“Having a social worker on interdisciplinary legal offices is a great asset for the client/parent because they have someone on their side who can understand their needs and help to provide additional resources and referrals,” said Olanike Oyeyemi, associate director of the National Association of Social Workers’ New York City chapter. “However, from my experience as a social worker and a director in the child welfare system, sometimes working with the social worker on the legal team becomes complicated,” such as when they advise clients not to accept a service plan dictated by ACS or the agency, until they are court ordered to.

Some parents also work with a dedicated peer counselor, fellow parent or caregiver who has already navigated a child welfare accusation themselves. A criminal defense attorney or a private investigator housed in a firm like CFR might also chip in expertise as necessary.

Such services are unheard of in most parts of the country. There isn’t even a Constitutional right to counsel for parents in child welfare cases — even though most states do mandate lawyers be available, no matter your income, it does not always happen in the early stages of the case.

“It’s important families are properly assessed to identify their strengths as well as where supports are needed. Defender services are one-stop lawyering and support shops,” said Joyce McMillan, a peer advocate and vocal leader for child welfare reform in New York.

The services beyond a lawyer could help to dramatically reduce the time children have to spend in foster care, away from their parents. A much-anticipated study of New York City's parent representation found that for parents represented by interdisciplinary law offices (ILO), youth spend about four fewer months in foster care than in cases represented by so-called "solo practitioner" or panel-appointed lawyers.

Still, the study had limitations, and Mark Courtney, a researcher and professor who led similar research on Washington state, warned that "we should be cautious and need more research, as they say at the end."

The findings dovetail with the new opportunity for federal funding to help pay child and parent attorneys. Last December, the federal Administration for Children and Families announced that states could seek 50 percent reimbursement for the cost of legal fees among both kids and parents in child welfare cases. Attorneys for parents like Guggenheim and lawyers representing children in foster care — who don't always fight on the same side as parents — both stand to benefit, and have worked together to encourage states.

"In law school the focus is on learning effective legal advocacy, not on how best to assess a young child's physical and emotional needs," said Karen Freedman, founder and Executive Director of Lawyers for Children, a New York City legal aid group that is one of the few nationally to offer social workers to each of its young clients. "But, to effectively advocate for a child, whether in a thriving or struggling family, foster home, or group setting, you need skilled professionals who can obtain and evaluate the information necessary to create a legal as well as a social wellbeing strategy."*

Of course, winning social services support and federal funding is one thing. Winning back custody of your kids is another for mothers like Vanessa.

She found it hard to convince the city to gradually grant her more time with the kids. First came "sandwich visits." She could visit her children at ACS headquarters for a 15- or 20-minute supervised visit, leave with them for a few hours, then spend another 15 or 20 minutes. Then came a "trial discharge," with the kids staying with her in the shelter with frequent city check-ins. At the same time, she was moving from shelter to shelter, and juggling jobs at J.C. Penney and a Mediterranean restaurant.

She almost lost everything at one point.

Vanessa came home and found a bruise on Lawrence's face, she said.

But she overcame strong hesitation and called her kids' foster care agency. The agency scheduled an emergency meeting in the morning, at an ACS office, to discuss what happened. Eden came, and aggressively pointed out that Vanessa wasn't home and did everything right in response, she said.

It worked. In October 2018, Vanessa finally got her kids back for good, and has found a permanent home.

“I wish it had never happened, obviously, even though, traumatic as it was and as awful as ACS was in some ways I do feel like I’m a better, more aware parent now.”

An excerpted version of this story was co-published in partnership with Vice.com.

**Updated, Monday, September 30th, 2019 to include comment from Karen Freedman of Lawyers for Children.*

ISSUE BRIEF

HEALTHY ORGANIZATIONS

How do parent partner programs **instill hope and support prevention and reunification?**

Parents who have come to the attention of child protective services or have recently lost custody of their children are dealing with incredible stressors. They often experience a range of emotions, including fear, anger, and hopelessness. They may believe they are powerless and alone. And based on many prior life experiences, they may feel hostility toward the very people involved in providing services and making important decisions about their children.

Many child welfare agencies have taken steps to prioritize meaningful engagement with families. In doing so, they have come to recognize the inherent power differential between parents and caseworkers, and the importance of connecting families newly involved with the system to parents who have already experienced the child welfare system, who can mentor, encourage, and instill hope for the journey ahead. One innovative approach that has emerged over the past decade is the use of peer mentors, or "parent partners," who serve to bridge the gap between birth parents and a complex, often challenging, and overwhelming system.

casey family programs

What are the benefits for parents?

There are many positives associated with participating in parent partner programs:

- **Instill hope:** Parent partners share their own experiences overcoming significant obstacles in their life and changing behavioral patterns to achieve reunification. This gives birth parents the hope they need to believe that they, too, can change, overcome barriers, and successfully parent or reunite with their children.
- **Self-advocacy:** One of the essential roles of the parent partner is to help birth parents gain awareness of their rights and responsibilities. They advocate for the birth parent and serve as translators, breaking down the bureaucratic requirements into more accessible language. They also help build parents' confidence to find their voice so that they can self-advocate in their case, as well as continue to advocate for themselves once they are no longer involved with child welfare.
- **Connection to services:** Caseworkers are often overburdened with high caseloads and do not have the capacity to follow up with parents to make sure they are engaging in services. Parent partners fill this gap. They form trusting relationships with birth parents, which allows them to check in regularly with parents and make sure they have the resources and information needed to complete their court-ordered services, such as substance abuse treatment, counseling, health care, housing, or rental assistance.
- **Agency culture shift:** Parent partners can also use their own experiences to inform agencies about how to engage more authentically with families. They can convey information on how to meaningfully instill family-centered and family-driven philosophy and principles into practice and policies. They may serve to help humanize parents, and facilitate a culture shift over time, as judges, caseworkers, and attorneys come to view birth parents in a more positive light and believe that they are capable of meaningful and lasting change.

What does the research tell us?

There is evidence of effectiveness of peer mentor and support programs in related fields, such as substance abuse, mental health, and pediatrics. An overview of veteran partner programs in pediatric health suggests that they may be effective in improving families' coping skills, knowledge of their child's physical or socioemotional conditions, and perceived access to resources.[1] Another study examining the effectiveness of substance abuse "recovery coaches" in Illinois found that parents who receive peer coaching are more likely to access substance abuse treatment services than parents in a control group.[2]

There is a small but growing number of empirical studies of parent partner programs in child welfare that reveal the following outcomes:

- Higher rates of reunification for those parents who have participated
- Lower rates of reentry for children involved in the program
- Increased participation in services and court hearings

See Appendix A[3] for a snapshot of the research on individual parent partner programs.

> As a parent partner, it's really not my job to save people from themselves. It's my job to help them figure out how to help themselves. And to walk alongside them, to guide them, to give them tools, coach them, and help them learn how to advocate for what they need.
>
> — TONI MINER,
> FAMILY SUPPORT PARTNER

Parent partner programs have also proven to be beneficial to the mentors. As mentors take on helping and leadership roles, they feel enhanced self-worth and sense of responsibility, build workplace skills, and are compensated for their efforts. While some parent partners may have records of substance use and criminal histories that limit employment options, serving as a parent partner also opens up new opportunities as they seek to re-establish connections in their communities and obtain new job skills.[4]

How are parent partner programs structured?

Parent partner programs generally pair parent partners, paraprofessionals who have experienced having a child placed in foster care and later have successfully reunified with that child, with parents currently involved in the child welfare system. Parent partner programs are founded on the premise that parents with lived experiences are uniquely positioned to serve as empathetic peers, mentors, guides, and advocates.

All Parent Partner program models provide peer-to-peer support but differ in their design and structure. Some programs (e.g., Yolo Crisis Nursery) focus on families involved with child welfare before a child has ever been removed, while others (e.g., Iowa's Parent Partners Program) focus exclusively on parents whose children are in foster care. There do not appear to be any jurisdictions that provide both simultaneously.

In one model, the child welfare agency hires and employs parent partners. They work directly with parents, as well as support other agency staff by exploring service options tailored to parents' needs. Deeply embedded in all decision-making processes, parent partners encourage staff to use practices that reflect respect for families' voices and choices. In another approach, the child welfare agency contracts with a nonprofit organization to implement a parent partner program, such as the Parents for Parents Program in Washington state. Parent partners are either employed or contracted by the nonprofit organization, which implements processes for building relationships between the child welfare workers and the parent partners. Parent partners are compensated for their work with parents, including attending family team meetings, court hearings, and one-on-one meetings. Parent partners sit at child welfare decision-making tables and create relationships with child welfare administrators, agency workers, service providers, court personnel, and community representatives.

Parent partners typically make initial contact with a parent at the first dependency hearing, a stressful and overwhelming experience for parents. At this point the parent partner informs them that they have been in their shoes and can relate to what they are going through. They let the parent know that they will be with them the entire time to support them and help them navigate through the system so they can be reunited with their children.

Other parent partner programs provide support to parents during a CPS investigation or following a case opening to prevent their children from being removed. In some instances, parent partners go out on investigations with caseworkers, in order to help families better understand what is happening and offer suggestions based on how they successfully navigated the process. In other instances, such as Ohio START or Washington's Parent Child Assistance Program (PCAP), parents who are struggling with substance use are paired with peer recovery mentors who have themselves been through recovery. In these programs, the parent partner teams with the caseworker and assists the parents through the recovery process to help keep the children safely at home.

Once a birth parent decides to engage with a parent partner, the parent partner shares contact information and takes steps to develop a bond around their common experiences. Parent partners are available during regular and non-traditional service hours (evenings and weekends) and are tasked with engaging the parent and responding to parental needs. The parent partner is with them through appointments, court, and treatment until their support is no longer needed. They also attend court, Team Decision Making (TDM) meetings, and other meetings.

How are parent partner programs funded?

Funding is needed to support the administration of the program, compensation of parent partners, training, supplies, and office space. Programs typically begin on a shoestring budget and seek to use a combination of funding streams, including[5]:

- Foundation or nonprofit program support
- Grant programs (e.g., Court Improvement Project)
- Child Abuse Prevention and Treatment Act (CAPTA) funds
- Promoting Safe and Stable Families (PSSF) program funds
- Title IV-E waiver funding
- Various state funding sources (services for child welfare, health, and mental health and substance abuse treatment)

Securing adequate funding has been a challenge for most parent partner programs around the country. Washington state, for example, was successful in using the positive outcomes from its pilot parent partner programs to advocate for state legislation to fund parent partner programs statewide.

What are some implementation considerations?

The effectiveness of a parent partner program depends on the structure, leadership, and management of the program. The program must be developed collaboratively with child welfare leadership and with full buy-in and support from agency and community partners.

- **Adequate recruitment:** Not all parents who have been reunified with their children would be effective parent partners. It is important to assess whether they have resolved issues stemming from their experiences with the system, in order to make sure they are emotionally prepared to serve in an advocacy role. Most programs require the parent to wait a certain amount of time after their case closes before they can become a mentor. Ultimately, it is important to recruit candidates with demonstrated personal commitment to collaboration as well as strong listening skills, compassion, and a positive attitude.

> There is nothing more impactful than to have someone that has walked that walk to walk beside you. It will ultimately help you understand a different way of being.
>
> — COREY BEST,
> FAMILY SUPPORT PARTNER

- **Meaningful training:** Becoming a parent partner represents a significant shift in roles: from being a client receiving supportive services, to being a professional mentor delivering them. Each parent partner program's design should include core training and other professional development opportunities for parent partners. In particular, training should be provided on the peer-to-peer support process, the mandates and operation of the child welfare system, and the rights and responsibilities of families involved in the system. Parent partners should also have opportunities to develop the leadership and communication skills that will enable them to engage other parents effectively and serve as equal partners with agency staff on decision-making bodies.
- **Culturally sensitive programming:** It is important that parent partners reflect the diversity of the population of parents that they are serving. Parent partners should see their work through a cultural lens and be aware of how a family's cultural or religious customs may play a role in how they interact with the child welfare system. Parent partner programs should incorporate cultural considerations into all levels of programming, including recruitment, hiring, and training.
- Inclusion of fathers**:** Traditionally, child welfare agencies have not effectively involved fathers in their efforts to address safety, permanency, and well-being. With the growing recognition of the important role fathers play in a child's healthy development, today's child welfare agencies are searching for strategies to more effectively engage fathers and paternal family members in ways that benefit children; parent partner programs can be one such strategy.[6]
- **Criminal backgrounds:** One common challenge to employing birth parents in the child welfare system is their potential child maltreatment and criminal histories. Some programs were able to obtain waivers to the rule prohibiting volunteers/employees with criminal histories from becoming official volunteers/employees of the agency. Other programs rely on contracts with nonprofits who do not have similar restrictions.

What are some examples of parent partner programs?

The three examples below highlight different types of parent partner programs that have been evaluated and show promising outcomes. Please see Appendix A for more examples of parent partner programs that have been evaluated.

1. **Parents Anonymous®** is designed to be both a prevention and treatment program that strengthens families who are at risk of or currently involved in the child welfare system, have behavioral health challenges, or face other family issues. It is open to any parent or caregiver in a parenting role seeking support, positive nurturing, and parenting strategies regardless of the age or special challenges of their children or youth. Services include weekly support groups, parent partner services (such as advocacy, kinship navigator services, in-home parenting, and supportive services including linkages to community

> We must see parents' strengths. When child welfare becomes involved, parents are operating from a place of fear and emotional displacement. As a parent mentor I get to be a liaison between parents. I get to support them in understanding their case plan requirements. Having been there before I can relate in a way others cannot. I also get to help shift away from deficit crippling approaches to building protective factors.
>
> — **SHROUNDA SELIVANOFF,** PARENT MENTOR

resources), and helpline services. The program aims to mitigate the impact of adverse childhood experiences (ACEs) for parents/caregivers and prevent the occurrence of ACEs in their children. The program also aims to build on the strengths of all family members and enhance family well-being by increasing protective factors through trauma-informed practices. Parents model and support one another in their leadership development through the process of shared leadership. A 2011 outcome evaluation of Parents Anonymous' peer support groups found that parent participants had statistically significant reductions in risk factors for child abuse and neglect.[7]

2. **Kentucky Sobriety Treatment and Recovery Team (START) Program** pairs specially trained child protective service (CPS) workers with family mentors, with at least three years of sobriety and previous involvement with CPS, to work with families. The program also partners with substance abuse treatment providers to ensure START participants have quick access to intensive treatment. Decision-making is shared among all team members, including the family and court.

Essential elements of the model include quick entry into START services to safely maintain child placement in the home when possible and rapid access to intensive addiction/mental health assessment and treatment. Each START CPS worker-mentor pair has a capped caseload, allowing the team to work intensively with families, engage them in individualized wrap-around services, and identify natural supports with goals of child safety, permanency, and parental sobriety and capacity. START is now operating in five counties across the state and has served more than 1,000 families, including 1,690 adults and more than 2,200 children between 2006 and early 2018.[8] Recent research has found that START is effective at keeping children at home: children in families served by START were half as likely to be placed in state custody compared with children in a matched control group. At case closure, more than 75 percent of children served by START remained with or were reunified with their parents.[9] In addition, a 2015 study found that children were less likely to experience a recurrence of maltreatment or re-enter foster care if their parents participated in Kentucky START.[10]

3. **Iowa's Parent Partner Program** has been implemented statewide. Each local Parent Partner site matches a parent currently involved in the system with a parent partner, who has been involved with the child welfare agency and has been successfully reunited with their child for at least a year and/or has healed from the issues that initially brought them to the attention of DHS. Parent partners are compensated to mentor and help parents locate and secure community resources. Parent partners commit to working with a family for a minimum of seven to 10 hours per month and each parent partner can mentor up to 15 parents. Iowa went statewide with its parent partner program in 2012, and as of 2016, there are more than 150 parent partners mentoring 1,800 parents across the state.[11] The program is currently being evaluated by the University of Nebraska at Lincoln. Preliminary findings from 2011-2015 cohorts have revealed that although length of time in foster care does not appear to be reduced by Parent Partner participation, children with parents who participated in the Parent Partner program have higher reunification rates and are less likely to have a subsequent removal from home within 12 months or 24 months of returning home compared with children whose parents did not participate in the Parent Partner program.[12]

To learn more, see related resources at www.casey.org/resources/field-questions/.

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QIC-ChildRep Best Practice Model

Six Core Skills

QIC Best Practice Model of Child Representation

The *QIC-ChildRep* Research implemented and then evaluated the *QIC-ChildRep* Best Practice Model of child representation. Our National Needs Assessment led to the QIC Best Practice Model, which is an update and expansion of the 1996 ABA Standards for Lawyers Representing Children in Child Abuse and Neglect Cases (1996 ABA Standards). One of our premises is the same as the first sentence of the 1996 ABA Standards. "All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court's jurisdiction continues."

In August 2011, after we framed the QIC Best Practice Model, the ABA House of Delegates passed **2011 ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings.** The QIC Best Practice Model is consistent with the recommendations of the ABA 2011 Model Act. These two documents provide a roadmap for reform of state systems of legal representation of children in child welfare proceedings. Any state interested in updating their child advocacy would be well advised to implement both the ABA Model Act and the ABA Standards/QIC Best Practice Model. The ABA Model Act lays out the key legal framework for child representation as it might appear in a state statute. The ABA Standards, updated by the QIC Model, are more detailed practice standards that could be in court rules or a separate Practice Standards Mandate. The QIC Model also focuses on clinical knowledge and practice skills necessary to implement such a law.

The differences between the 1996 ABA Standards and this QIC Best Practice Model are largely ones of emphasis and presentation that flow from developments since 1996 in state law, academic literature, general discussions in the field and our study group discussions. QIC Best Practice language that differs from the ABA Standards is underlined in the presentation below. Some of the principal differences between the ABA Standards and the QIC Best Practice Model are these:

1. The definition of a "child's representative" (CR) includes an individual lawyer providing legal representation to the child as well as an office, which could be multidisciplinary, that is providing legal representation to the child.
2. The CR shall accommodate the child's wishes and preferences according to state law. No matter how the child's wishes are accommodated in setting the goals of the representation, however, whether best interests, client directed or something in between, the lawyer is expected to aggressively fulfill the duties and obligations as set out in this model.
3. The QIC emphasizes getting to know the child, listening to the child, facilitating the child's participation in court hearings as much as possible, and maximizing the child's participation in the decision-making process even if the lawyer is acting in a best interests role or where the child is very young.
4. The QIC Model emphasizes the CR role in counseling and advising the child.
5. The QIC Model emphasizes a heightened role for lawyers in placement decisions.
6. Advocacy for services required for youth aging out is emphasized.
7. Non-adversarial, problem solving approaches are emphasized.
8. The QIC Model includes a requirement that the administrative structure be clear for appointment, support and accountability of the CR.

The following table summarizes the *QIC-ChildRep* Model. The full text follows the chart. The QIC Best Practice Model sets out the *duties* of the individual child representative and the important *organizational and administrative supports* required in order for the child's representative to adequately perform those duties.

QIC-ChildRep Model of Child Representation
Adapted from the 1996 ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases

1. General Duties and Activities of the Child's Legal Representative
General Duties: Timely appointment, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, accommodate client preferences. **Out of Court - Actions to be Taken:** Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements.

	In-Court - Active Participation in Hearings: Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, undertake certain obligations post-disposition. **Post-Hearing:** Review court's order, communicate order to child, monitor implementation of orders. **Appellate Advocacy:** Decision to appeal, withdrawal, participation in appeal, conclusion by appeal. **Cessation of Representation:** Contacts post representation, if any.
2.	**Organizational and Administrative Supports Provided the Representative**
	General Representation Rules: Administrative structure is clear for the appointment, support and accountability of the child's representative. The child's representative independent from the court. **Lawyer Training:** Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship. **Lawyer Compensation:** Adequate and timely compensation, reimbursement provided expenses. **Caseload Levels:** Caseloads are of a manageable size.

QIC BEST PRACTICE MODEL OF CHILD REPRESENTATION
Language that differs from the 1996 ABA Standards is underlined.

PART ONE

DEFINITIONS:

Child's Representative means the individual or office charged with providing legal services for a child who is the subject of judicial child welfare proceedings. The *child's representative* (CR) is to ensure that the child's interests are identified and presented to the court. The duties of the CR are as presented below. Although the CR will be providing legal representation to the child, the CR functions may be fulfilled by a team of multidisciplinary professionals, including a lawyer plus social workers, paralegals and/or lay advocates.

1. GENERAL DUTIES OF THE CHILD'S LEGAL REPRESENTATIVE

1. *Appointment*: The child's representative should be appointed and begin service prior to the first judicial proceeding. The ideal arrangement would be for the CR to be appointed sufficiently in advance of the first hearing so as to provide time for some preliminary investigation and exploration of options to protect the child with minimum disruption of the child's world. The CR should serve until the court's child welfare authority over the child ends, including through appeals.

2. *Child's Interests*: The CR shall serve as the independent representative for the child as determined by state law. Whether the lawyer takes his or her direction from the child or makes a best interest judgment as to what the goals of the litigation should be, once the goals are determined the lawyer is expected to aggressively fulfill the duties and obligations set forth here.

   Although the majority of state laws adopt a 'best interests" or dual role for their child representative, some states have moved to a client directed representation for older children and best interests or substituted judgment for younger children. The *QIC-ChildRep* is interested in studying what difference, if any, different ways of accommodating the child's wishes makes as to case processing or case outcomes.

3. *Basic Obligations*: The CR should:

   a) Obtain copies of all pleadings and relevant notices;

   b) Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;

   c) Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;

   d) Participate fully in all placement decisions; seek to disrupt the child's world as little as possible; "remove the danger, not the child"; assure that all placement decisions are made with care and deliberation; when placement is necessary help identify placement alternatives

   e) Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;

   f) Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;

   g) Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and

   h) Identify appropriate family and professional resources for the child

4. *Conflict Situations*: The court may appoint one lawyer to represent siblings so long as there is no conflict of interest.

5. *Determining Decision-making Capacity*: The CR should be vigilant and thoughtful about maximizing the child client's participation in determining the positions to be taken in the case. Even a lawyer acting in the role of a best interest

attorney or guardian ad litem should allow the child to participate in the decision-making process to the extent that the child is able to do so. The functional capacity to direct representation or contribute to positions taken exists on a continuum, even for adults. ("...[T]he lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." ABA Model Rules of Prof Resp. 1.14) The CR should consider whether the child client has sufficient capacity to make a decision or to have significant input with respect to a particular issue at a particular time.

6. *Client Preferences*: When it comes to accommodating a child's wishes and preferences, perhaps the best an attorney can do is to really listen to the child, understand what is important from the child's perspective and how decisions will impact on the child's experience of his or her life, and act with humility when considering taking a position which significantly differs from the child's expressed wishes. (See Duquette and Haralambie, "Representing Children and Youth", in CHILD WELFARE LAW AND PRACTICE, 2d Edition, (2010), Duquette and Haralambie, Editors.) The CR must understand "how this client speaks, how this client sees the world, what this client values, and what shows this client respect." (Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions p. 258 (1997))

2. OUT OF COURT: ACTIONS TO BE TAKEN

1. *Meet With Child*. Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child's age, the child's representative should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child. Building a trusting relationship with the child is essential to successful representation. The CR can establish an appropriate tone with questions like "How can I help you? How can I be of service to you?" The child is the client and the lawyer should aggressively seek to meet the needs and interests of the child, just as the lawyer would for an adult or corporate client.

2. *Investigate*. To support the client's position, the child's representative should conduct thorough, continuing, and independent investigations and discovery that may include, but should not be limited to:

   a) Reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;

   b) Reviewing the court files of the child and siblings, case-related records of the social service agency and other service providers;

   c) Contacting lawyers for other parties and non-lawyer guardians ad litem or court-appointed special advocates (CASA) for background information;

   d) Contacting and meeting with the parents/legal guardians/caretakers of the child, with permission of their lawyer;

   e) Assist in identifying relatives from maternal and paternal sides of the family who might provide emotional and other support to the child and family or become a caretaker for the child.

   f) Obtaining necessary authorizations for the release of information

   g) Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses.

   h) Reviewing relevant photographs, video or audio tapes and other evidence; and

   i) Attending treatment, placement administrative hearings, and other proceedings involving legal issues, and school case conferences or staffing concerning the child as needed.

3. *Advice and Counseling*: The CR and child client should work together to set the goals of the representation. Representing children involves more than investigation and advocacy. All attorneys have the duty to help a client understand their legal rights and obligations and identify the practical options. This is no less true for a child client. State law and the child's age and maturity will govern to what extent the CR accommodates the child's wishes in setting the goals of the advocacy. But in any event and consistent with the child's level of maturity and understanding, the child's representative will discuss the total circumstances with the child, strive to understand the child's world and perspective, assist the child in understanding the situation and the options available to him/her, and counsel the child as to the positions to be taken. The CR should advise the client as to the jurisdiction's rules -- and limitations, if any -- governing attorney-client privilege and confidentiality.

4. *File Pleadings*. The child's representative should file petitions, motions, responses or objections as necessary to represent the child. Relief requested may include, but is not limited to:

   a) A mental or physical examination of a party or the child;

   b) A parenting, custody or visitation evaluation;

   c) An increase, decrease, or termination of contact or visitation;

   d) Restraining or enjoining a change of placement;

   e) Contempt for non-compliance with a court order;

   f) Termination of the parent-child relationship;

   g) Child support;

   h) A protective order concerning the child's privileged communications or tangible or intangible property;

   i) Requesting services for child or family; and

   j) Dismissal of petitions or motions.

5. *Request Services*. The child's representative should seek appropriate services (by court order if necessary) to access entitlements, to protect the child's interests and to implement a service plan. These services may include, but not be limited to:

a) Family preservation-related prevention or reunification services;

b) Sibling and family visitation;

c) Child support;

d) Domestic violence prevention, intervention, and treatment;

e) Medical and mental health care;

f) Drug and alcohol treatment;

g) Parenting education;

h) Semi-independent and independent living services;

i) Long-term foster care;

j) Termination of parental rights action;

k) Adoption services;

l) Education;

m) Recreation or social services;

n) Housing;

o) Appropriate discharge plan, including services to assist the youth aging out of foster care.

6. *Child With Special Needs*. Consistent with the child's wishes, the child's representative should assure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities. These services may include, but should not be limited to:

a) Special education and related services;

b) Supplemental security income (SSI) to help support needed services;

c) Therapeutic foster or group home care; and

d) Residential in-patient and out-patient psychiatric treatment.

7. *Adopt a Problem-solving Approach.* The child's representative should continually search for appropriate non-adversarial resolution of the case that protects the child and meets the child's needs. The CR should adopt a problem-solving attitude and seek cooperative resolution of the case whenever possible. The CR should also initiate and participate in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child. The child's representative should use suitable mediation and family conferencing resources.

3. IN-COURT: ACTIVE PARTICIPATION IN HEARINGS

1. *Court Appearances.* The child's representative should attend all hearings and participate in all telephone or other conferences with the court unless a particular hearing involves issues completely unrelated to the child.

2. *Client Explanation.* The child's representative should explain to the client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

3. *Motions and Objections.* The child's representative should make appropriate motions, including motions *in limine* and evidentiary objections, to advance the child's position at trial or during other hearings. If necessary, the child's representative should file briefs in support of evidentiary issues. Further, during all hearings, the child's representative should preserve legal issues for appeal, as appropriate.

4. *Presentation of Evidence.* The child's representative should present and cross examine witnesses, offer exhibits, and provide independent evidence as necessary.

5. *Child at Hearing.* In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify.

6. *Expanded Scope of Representation.* The child's representative may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment. For example:

a) Child support;

b) Delinquency or status offender matters;

c) SSI and other public benefits;

d) Custody;

e) Guardianship;

f) Paternity;

g) Personal injury;

h) School/education issues, especially for a child with disabilities;

i) Mental health proceedings;

j) Termination of parental rights; and

k) Adoption.

7. *Obligations After Disposition:* The child's representative should seek to ensure continued representation of the child during the pendency of the court's jurisdiction over the child.

4. POST-HEARING

1. *Review of Court's Order*. The child's attorney should review all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices.

2. *Communicate Order to Child.* The child's attorney should discuss the order and its consequences with the child.

3. *Implementation.* The child's attorney should monitor the implementation of the court's orders and communicate to the responsible agency and, if necessary, the court, any non-compliance.

5. APPELLATE ADVOCACY

1. *Decision to Appeal.* The child's attorney should consider and discuss with the child, as developmentally appropriate, the possibility of an appeal. If after such consultation, the child wishes to appeal the order, and the appeal has merit, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child while the appeal is pending.

2. *Withdrawal* If the child's attorney determines that an appeal would be frivolous or that he or she lacks the necessary experience or expertise to handle the appeal, the lawyer should notify the court and seek to be discharged or replaced.

3. *Participation in Appeal.* The child's attorney should participate in an appeal filed by another party unless discharged.

4. *Conclusion of Appeal.* When the decision is received, the child's attorney should explain the outcome of the case to the child.

6. CESSATION OF REPRESENTATION

1. The child's attorney should represent the child to the end of the court's jurisdiction and then discuss the ending of the legal representation and determine what contacts, if any, the child's attorney and the child will continue to have.

PART TWO

Organizational and administrative supports for the child representative

7. GENERAL REPRESENTATION RULES

1. Administrative structure is clear for appointment, support and accountability of the CR.

2. The child's representative should be independent from the court, court services, the parties and the state. The CR should retain full authority for independent action.

8. LAWYER TRAINING

1. The court or administrative agency providing child representation should assure that each CR, whether a private practitioner or a part of a child welfare law office, be qualified by training or experience to fulfill the duties of the role.

2. The court or administrative agency providing child representation should provide on-going training programs on the role of a child's representative. Training programs should prepare the lawyer just beginning work in child welfare, provide continuing training, and encourage certification of experienced lawyers as specialists in the child welfare field.

3. Training should include:

   a) Information about relevant federal and state laws and agency regulations;

   b) Information about relevant court decisions and court rules;

   c) Overview of the court process and key personnel in child-related litigation;

   d) Description of applicable guidelines and standards for representation;

   e) Focus on child development, needs, and abilities;

   f) Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;

   g) Information concerning family dynamics and dysfunction including substance abuse, and the use of kinship care;

   h) Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of agencies providing such services as well as provisions and constraints related to agency payment for services; and

   i) Provision of written material (e.g., representation manuals, checklists, sample forms), including listings of useful material available from other sources.

3. The court or administrative agency providing child representation, should provide individual court-appointed attorneys who are new to child representation the opportunity to practice under the guidance of a senior lawyer mentor.

9. LAWYER COMPENSATION

1. The court or administrative agency providing child representation, should assure that child's representatives receive adequate and timely compensation throughout the term of the appointment that reflects the complexity of the case and includes both in court andout-of-court preparation, participation in case reviews and post-dispositional hearings, and appeals. The rate of payment for these legal services should be commensurate with the fees paid to equivalently experienced individual court-appointed lawyers who have similar qualifications and responsibilities.

2. The court or administrative agency providing child representation, should assure that the child's representative has access to or is provided with reimbursement for experts, investigative services, paralegals, research costs, and other services, such as copying of medical records, long distance phone calls, service of process, and transcripts of hearings as a fundamental part of providing competent representation.

10. CASELOAD LEVELS

1. The court or administrative agency providing child representation, should assure that caseloads of the child representatives are of manageable size so that the CR can adequately discharge the duties to the child client.

Promoting Excellence: CWLS Certification

About CWLS Certification

Child Welfare Law Specialist (CWLS) certification is a professional achievement that signifies an attorney's specialized knowledge, skill, and verified expertise in the field of child welfare law. The specialization area is defined as "the practice of law representing children, parents or the government in all child protection proceedings including emergency, temporary custody, adjudication, disposition, foster care, permanency planning, termination, guardianship, and adoption. Child Welfare Law does not include representation in private custody and adoption disputes where the state is not a party."

The CWLS certification process is available to attorneys in good standing who have spent the three years preceding application substantially involved in the practice of child welfare law. Traditionally, this includes providing direct representation to children, parents, or governmental agencies. However, NACC may also certify attorneys who have chosen instead to work in this field as judicial officers, law faculty, law firm directors, or policy advocates.

The CWLS credential is granted only to those attorneys who successfully complete a rigorous application and examination process - it is the highest testament to an attorney's dedication and demonstrated excellence in this discipline.

The CWLS certification program was created and sponsored by a grant from the U.S. Department of Health and Human Services' Children's Bureau and is accredited by the American Bar Association. The program has also been endorsed by the National Council of Juvenile and Family Court Judges (NCJFCJ) and the Conference of Chief Justices/Conference of State Court Administrators (CCJ/COSCA). NACC also obtains the necessary authorization from state regulatory authorities such as the state court, state bar association, or committee on legal specialization.

How to Become a CWLS

Ready to become certified? Just follow these steps:

1. Request an application by filling out our online form.
2. Complete and submit it with the application fee.
3. Submit any additional application materials, including a writing sample and CLE History Form or transcript.
4. Schedule your personal exam date/location and pass.

Eligibility at a Glance

Child Welfare Law Specialist certification is modeled after physician board certification and requires that attorneys satisfy certain requirements to apply. Below, you'll find a list of some of the most important requirements. For a complete list of requirements, please see our Certification Standards, which you'll find on the Applicant Resources page.

- Three or more years practicing law
- 30% or more of the last three years involved in child welfare law
- 36 hours of continuing legal education within the last three years in courses relevant to child welfare law (45 hours in California; 36 hours + 9 hours of ethics courses in Arizona; 36 hours of state-approved CLE in South Carolina)
- A writing sample drafted within the last three years that demonstrates legal analysis in the field of child welfare law

Applicant Resources

Our Applicant Resources page provides you with information and tools to help guide you through the application process. You'll find information on CWLS certification standards and the certification exam, as well as a selection of useful forms and additional materials.

Recertification Info

After five years as a Child Welfare Law Specialist, certified attorneys must apply for recertification. The fee is $300, and the abridged application process does not require a writing sample or examination. For more info, visit our Recertification Info page. There, you'll find an electronic recertification application, recertification standards, and other useful information.

CWLS Resources

Already a Child Welfare Law Specialist? Why not build your own credibility while helping the CWLS program gain recognition and exposure? Our CWLS Resource page contains a variety of tools to help you promote your specialty.

CWLS Search Directory

Looking for a CWLS in your state or jurisdiction? Perhaps you're an existing CWLS who's looking to network with like-minded professionals. Our CWLS Search Directory can help you locate a specialist near you. If you know who you're looking for, you can also search by name.

A National Approach

At NACC, we are constantly working to bring a higher level of professional accountability to the field of child welfare law. Over 800 attorneys have been certified since the CWLS program began in 2006, collectively helping to raise the standards of practice for all those working in the field of child abuse and neglect law and all those affected by it.

NACC's Child Welfare Law Specialist certification program is currently available in the following jurisdictions: