Child Welfare and Immigration in New Mexico: Challenges, Achievements, and the Future

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Immigration—specifically, the migration of families between the United States and the United Mexican States—claims a significant piece of New Mexico’s history. Recently national attention has focused on the impact on families of this migration and the resulting outcomes. This article outlines the immigration issues experienced by families touching the New Mexico child welfare system, including the challenges created in the intersection of child welfare and migration from the perspective of a border state; the application of national recommendations for child welfare practice and achievements; and ongoing work aimed at enhancing response and intervention with immigrant families. This article also highlights the policies adopted and the partnerships involving child protection agencies and advocates on both sides of the New Mexico/Mexico border that have forged to meet the needs of the children and families.

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Immigration, and more specifically, the migration of families between the United States and the United Mexican States (Mexico), claims a significant piece of New Mexico’s history. The impact and outcomes on families and children resulting from this migration have begun receiving national attention in recent years. In 2006, university and non-profit experts initiated a discussion among a network of leaders in the fields of social welfare and immigration that resulted in a published set of recommendations for serving
immigrant families in child welfare (Dettlaff, Vidal de Haymes, Velazquez, Mindell & Bruce, 2009; Velasquez, Vidal de Haymes, & Mindell, 2006).

The newly formalized Migration and Child Welfare National Network, has drawn attention to the enormity of the obstacles and stressors faced by immigrant families and the child welfare systems that respond to them. Recommendations for best practice reflect multiple factors and various facets of the child welfare system; address research, data collection, policy and training issues; and the ethical issues that may arise in the process (Dettlaff, Vidal de Haymes, Velazquez, Mindell, & Bruce, 2009).

This article outlines immigration issues experienced in the New Mexico child welfare system, including the ongoing challenges identified in the intersection of child welfare and migration from the perspective of a border state; the application of national recommendations for child welfare practice in the state and achievements; and ongoing goals for enhancing response and intervention with immigrant families. This article also highlights the policies adopted and the partnerships that have forged in the past year to meet the needs of these children and families, through support from child protection agencies and advocates on both sides of the New Mexico/Mexico border.

BACKGROUND

In the United States, more than 30% of the immigrant population is undocumented (Passel, 2006). It is estimated that undocumented immigrants number 11.9 million nationwide, approximately 4% of the total population (Passel & Cohn, 2009). Approximately 75% (76%) of the nation’s undocumented population are from Latin America (Passel & Cohn, 2009; Capps & Passell, 2004; U.S. Census Bureau, 2006). Mexico is the source of the largest numbers, accounting for 59% of the undocumented immigrants in the United States (Passel & Cohn, 2009).

Nationally, 33% of children of undocumented parents and 20% of adult undocumented immigrants live in poverty (Passel & Cohn, 2009). More than one in ten U.S. families with children is a mixed immigration status family (i.e., families with at least one non-citizen parent and one child who is a citizen) (Passel, 2006). In 2008, an estimated 5.5 million children (more than 7% of all children living in the United States) had undocumented parents (Passel & Cohn, 2009). Approximately 75% of these children, or 4 million, were U.S.-born citizens (Passel & Cohn, 2009).

Most recent figures indicate that unauthorized immigrants living in the United States are more geographically dispersed than in the past (Passel & Cohn, 2009). However, unauthorized Mexican immigrants have been found to be somewhat more concentrated than all other undocumented immigrants, accounting for high proportions of the undocumented immigrant population in a few states (Passel & Cohn, 2009).
Immigration in New Mexico

New Mexico is crouched between the more highly populated states of Texas and Arizona, sharing its southern border with Mexico’s northern border. A large state geographically, New Mexico’s population hovers approximately 2 million residents who are mostly concentrated in a few high population areas. Immigrants in New Mexico, not unlike other areas of the country, have been seen in large metro areas of the state, such as Albuquerque in the central section, and Las Cruces in the south (Passel & Cohn, 2009). However, in recent years, smaller communities around Santa Fe in northern New Mexico and eastern New Mexico have also been impacted by a strong immigrant presence.

New Mexico’s demographic is reflective of a dynamic typical in border areas across the region where transnational migration is prevalent. Migration, once perceived as a singular, directed movement involving a sending state and a receiving state, is seen in a transnational context as an ongoing movement between two or more countries. More and more migrants to the United States have developed strong transnational ties to more than one home country, manifested in strong interconnectivity among peoples, governments, and organizations, and often creating duality in economic, cultural, social and political activities (Basch, Glick-Schiller, & Szanton-Blanc, 1994). The prevalence of transnationalism is widespread in the border area of New Mexico, as many families split by the U.S.-Mexico border travel back and forth on a regular basis for shopping, education, medical care, and to visit with family and friends.

Immigration is a contested issue in New Mexico, containing areas that support a pro-immigrant stance and others that have adopted local policies of intolerance. The city of Santa Fe is designated a “sanctuary city” by local government. Other communities in the state have developed informal policies of intolerance of undocumented immigrants, and some local law enforcement agencies have reportedly collaborated in arrest and detainment activities with immigration enforcement agencies along the border. However, in 2009, New Mexico became the twenty-third state to ban racial profiling (New Mexico Legislature, 2009). This new law is expected to impact immigrant communities that are routinely questioned about immigration status by local law enforcement agencies. Local agencies and grassroots organizations are currently working in their respective communities to ensure that local police agencies comply with this legislation.

New Mexico is not a traditional high destination state for immigrants to the United States, nor is it one of the 22 states that experienced the most rapid growth in immigration during the 1990s (Capps & Fortuny, 2006). Nevertheless, New Mexico’s immigrant population has grown significantly in the past decade, nearly on par with current trends nationwide (U.S. Census Bureau, 2006). In New Mexico, in 2008, there were an estimated 80,000
undocumented immigrants (4% of state population), up from 55,000 in 2000 (Passel & Cohn, 2009). New Mexico is one of three states in which 90% of the undocumented population has their origins in Mexico (Passel & Cohn, 2009).

These figures are significant because Mexicans are more likely than other undocumented immigrants to have children (Passel & Cohn, 2009). They are also less educated and have lower incomes than other undocumented immigrants (Passel & Cohn, 2009). In New Mexico, it is estimated that at least 20% of children in New Mexico are children of immigrants (Capps & Fortuny, 2006). An estimated 85% of children with immigrant parents in New Mexico have at least one parent from Latin America, most of whose origins are in Mexico (New Mexico Voices for Children, 2007; Passel & Cohn, 2009).

Challenges to Immigrants in New Mexico

The challenges faced by immigrant families in New Mexico are not few. In New Mexico, 34% of children in immigrant families live in a linguistically isolated household, and approximately 17% of immigrant children live in families in which their parents have a less than ninth-grade education (New Mexico Voices for Children, 2007). Also, 37% of immigrant children live below the poverty threshold, compared with 24% of children in U.S.-born families (New Mexico Voices for Children, 2007). In addition, 71% of children live in low-income families, versus 50% of children in U.S.-born families in the state (New Mexico Voices for Children, 2007).

In the Albuquerque metro area and surrounding areas of northern New Mexico, it is estimated that, currently, 24% to 29% of children live in immigrant families (Annie E. Casey, 2009), higher than the state average. These areas also represent larger concentrations of child welfare cases involving immigrant families than other more rural parts of the state (Finno, Reyes, Espinoza Rodriguez, & Gallardo Robles, 2010). Up to 44% of children are estimated to be living in immigrant families in areas on the border, such as the border town of Deming, New Mexico (Annie E. Casey, 2009). While the number of immigrant children and families in the New Mexico child welfare system is relatively small, the associated risks and complexity of these cases, combined with the growth of the immigrant population in New Mexico, demonstrates the need for child welfare to continue examining and addressing the needs of this population.

CHILD WELFARE AND IMMIGRATION

Risks and Vulnerabilities

The risks for involvement in the child welfare system associated with the immigration experience in New Mexico are comparable to the issues immi-
Migrants face in mid to large urban areas across the country, and are widely documented (Capps, Fix, Ost, Reardon-Anderson, & Passel, 2004; Partida, 1996; Pine & Drachman, 2005; Smart & Smart, 1995; Padilla & Perez, 2003; Hovey, 2000; Thoman & Suris, 2004). Current data support the assertion that undocumented immigrants from Latin American countries are primarily young, poor, have little formal education, and speak little to no English (Passel & Cohn, 2009). The driving force in the decision to migrate is most often based on financial necessity or dangerous political situations in the country of origin (Partida, 1996). Many immigrants experience robbery, violence, physical persecution, and sexual assault in the process of immigration (Solis, 2003). Families often migrate in stages, which results in children being separated from their parents and other family members for extended periods of time (Partida, 1996; Pine & Drachman, 2005). The stress, trauma and loss associated with this initial transition period can result in issues such as depression, anxiety and post-traumatic stress disorder (Smart & Smart, 1995).

Once arrived to the United States, immigrants are increasingly vulnerable due to language barriers, difficulty in obtaining employment, unfamiliar customs, loss of support systems, ongoing threats of violence or deportation, and exposure to social discrimination and prejudice (Hancock, 2005; Padilla & Perez, 2003; Solis, 2003; Smart & Smart, 1995). The loss of support and the increased stress in navigating new systems have been associated with psychological problems such as depression, anxiety and alcoholism (Leon & Dziegielewski, 1999). Undocumented immigrants are less likely to access needed resources or services due to a sense of caution or mistrust in relationships and fear of deportation (Pine & Drachman, 2005; Smart & Smart, 1995). Furthermore, many immigrants have cultural norms that differ from those in the United States, in the areas of child rearing, discipline, supervision and medical treatment. In some child welfare agencies, cultural differences in parenting styles have been viewed as negligence (Olayo Mendez, 2006; Zielewski, Malm, & Geen, 2006).

Acculturation—or the process of change experienced by immigrants with exposure to a new culture—often causes significant stress to immigrants, particularly to those whose host cultures are distinct in ethnicity, religion, and language (Padilla & Perez, 2003). Extensive research on acculturative stress has linked this process to anxiety, depression, substance abuse, declining health and physical functioning, and diminished coping skills in adults and adolescents (Alderete, Vega, Kolody, & Aguilar-Gaxiola, 1999; Finch, Frank, & Vega, 2004; Miranda & Matheny, 2000; Thoman & Suris, 2004). The process of acculturation has been found to increase tensions and conflict between children and parents as values change, and contributes to parental loss of control (Fontes, 2002). Acculturative stress has also shown to place significant stress on marital relationships as traditional gender roles change, and increase the risk of domestic violence in the home (Coltrane, Park & Adams, 2004; Cunradi, Caetano, & Shafer, 2002).
Despite high levels of poverty, physical and emotional vulnerability, and increased risk of mental health issues and family conflict, immigrant families possess a key protective factor that may contribute to under-involvement in the child welfare system. Children of immigrants have been found to be relatively less likely than their counterparts to live in a single parent household in the United States, potentially lowering their risk of involvement with the child welfare system (Vericker, Kuehn, & Capps, 2007).

The Children, Youth, and Families Department Protective Services Division (PSD)

The Children, Youth, and Families Department Protective Services Division (PSD) is the state public child welfare agency in New Mexico. Despite the heightened risks and vulnerabilities associated with undocumented immigration, PSD estimates that the number of undocumented children and children of immigrants in PSD custody is comparatively lower than anecdotal reports from other states (Finno, Reyes, Espinoza Rodriguez, & Gallardo Robles, 2010). The number of undocumented children steadily account for approximately 1% to 2% of the approximately 2,000 children in custody across the state (Finno et al., 2010). Although it has historically been a challenge to track citizenship status of parents involved in the child welfare system in New Mexico, current estimations indicate that approximately 6% of children in custody are immigrants or children of immigrants (Finno et al., 2010). Most immigrant families, more than 90%, who come to the attention of PSD, have their origins in Mexico (Finno et al., 2010).

In the past, the PSD involvement with immigrant families was concentrated in the southern border region of the state and in the Albuquerque metro area. However, in recent years, the shifting population had affected rural offices across the state with little previous experience with immigration (Finno et al., 2010). These cases have become more widespread and complex, involving families with varying legal statuses residing in multiple nation states, and demanding more resources to adequately and effectively serve them.

PSD PRACTICE AND INTERVENTION

PSD “believes in the strengths and resiliency of all families in New Mexico and advocates to enhance their safety and well-being . . . PSD serves and supports children and families in a responsive, community-based system of care that is client-centered, family-focused and culturally competent” (New Mexico Children, Youth, and Families Department, 2009). Central among the core principles of PSD is the declaration that culturally competent services are delivered without regard to race, ethnicity, religion, national origin,
gender, sexual orientation, or disability. PSD serves children and families in New Mexico regardless of national origin or immigration status (New Mexico Children, Youth, and Families Department, 2009). Though an undocumented legal status impedes access to federal funds for service, New Mexico has committed to ensuring equitable quality service for all residents regardless of legal status using state funding. PSD is not required to share confidential information with federal immigration authorities. PSD is bound by and upholds confidentiality law, and PSD considers immigration status to be confidential information.

Expectations placed upon New Mexico child welfare workers are high as best practices and standards for service in working with immigrant families are becoming more clearly defined (Lincroft, Resner, Leung, & Bussiere, 2006). Several best practice models exist that define critical steps in effectively serving immigrant families in any child welfare system (Georgia Department of Human Resources, 2009; University of New Mexico Corinne Wolfe Children’s Law Center, 2007; Earner, 2005, 2007; New York City Administration for Children’s Services, 2005; Pine & Drachman, 2005; Vidal de Haymes, 2005; Fong, 2004). Initial and ongoing training in child welfare practice in New Mexico has begun to emphasize many of these special considerations for working with immigrant families.

A family’s legal status contributes to the structuring of the immigration experience and creates challenges to family well-being; thus this status is a primary factor to consider in assessing and determining appropriate interventions by the child welfare system (Lincroft Resner, Leung, & Bussiere, 2006). PSD investigators are most often the immigrant family’s first point of contact with the agency. Some initial inquiries made in interviewing parents when children come into custody serve to determine each family member’s legal status in the United States. These frontline staff have been trained to frame questions about legal status delicately, to inform families that PSD does not release information regarding legal status to any law enforcement entity, unless that information is subpoenaed by law enforcement in court (State of New Mexico, 2009b). They are trained to clarify PSD’s reason for inquiry; to comply with consular notification requirements; to provide families with referrals for legal assistance to their country of origin’s foreign consulate; and to determine eligibility for federally funded resources and services (State of New Mexico, 2009b). PSD’s Title IV-E unit specializes in determining and verifying eligibility for federal IV-E and other benefits in the inception of and throughout a case. This unit also assists in determining legal status for parents and children in custody, and participates in a new process for streamlining and tracking all cases involving non-U.S. citizen children and/or parents in one centralized database.

In addition, PSD has increased emphasis in practice on determining and providing for the language needs of each family member involved in a case. Standardized forms have been reviewed and translated into Spanish.
through a contracted certified translation agency, and the need for additional translations in other languages is reviewed centrally on an ongoing basis. PSD has issued internal guidelines for ensuring language needs are met, which mandate that competent interpretation services be arranged for all clients that prefer them. These guidelines specify that it is allowable to utilize an adult family member, volunteer or other professional as an interpreter in a case as long as their qualifications and proficiency can be verified. PSD also employs many personnel who are proficient in Spanish, many of whom speak Spanish at home, and have been designated to serve as interpreters for clients in field offices when their schedules allow. PSD has contracted with a service provider statewide for phone interpretation services should no interpreter be available in person. This system has served to maximize resources with minimal budget to ensure that families have access to quality language assistance.

Apart from legal status and language needs, there are several other special factors that require attention in child welfare intervention with immigrant families and have been outlined in literature in recent years (Borelli, K., Earner, I., & Lincroft, L., 2008; Dettlaff & Rycraft, 2006; Earner, 2007; Fong, 2004). Positive outcomes require a child welfare workforce that understands the issues, laws and needs pertaining to immigrant families (Dettlaff et al., 2009). Towards this end, over the past year, PSD has conducted all-staff trainings on working with immigrants, and has designated employees and realigned resources to create in-house expertise in immigration issues in order to: provide coaching and assistance in staffing complicated cases; attend immigration related appointments with clients and workers; guide workers and clients through various immigration applications; and locate interpreter services and translate key documents for the agency. New Mexico’s challenges and achievements in practice with immigrant families are detailed in the sections to follow.

Challenges to Practice in New Mexico

PSD faces a variety of challenges in working with immigrant families, some that are similar to those challenges documented by the Migration and Child Welfare National Network, and others that are particularly unique to New Mexico (Dettlaff et al., 2009; Lincroft et al., 2006). Cross-systems collaboration is an area of great challenge albeit a necessity for PSD. As a border state, New Mexico relies on international, federal, state, and local partners in coordinating efforts to serve immigrants seamlessly across systems. A recent challenge related to cross system collaboration pertains to the impact of immigration raids and enforcement activities on families (Capps, Castaneda, Chaudry & Santos, 2007; Chaudry, Capps, Pedroza, Castaneda, Santos, & Scott, 2009). Immigration raids and enforcement activities were documented in New Mexico in 2007 and 2008, although PSD was not notified to respond
nor have any children come into custody as a direct result of these activities (State of New Mexico, 2008). PSD was not routinely informed of enforcement operations before they happened. It is expected that relatives, neighbors, friends, and community agencies absorbed the responsibility of caring for children left without parents, as was documented in other areas of the country (Capps et al., 2007). This lack of initial involvement by PSD to ensure the safety and well-being of children who were separated from their parents may place them at an additional risk of later entering into the system.

The lasting impact of these enforcement activities has been documented to be manifested in ongoing family separation, employment, housing and food hardship, and increased child fear and anxiety (Chaudry et al., 2009). Though humanitarian guidelines have reportedly been implemented by Immigration and Customs Enforcement (ICE) to minimize the separation of children from their families in workforce raids, and enforcement operations have been narrowed to focus on immigrants who have committed serious crimes, PSD remains witness to ICE’s local practices that continue to separate families and children and burden the child welfare system.  

Additionally, several common policy issues are related to cross-system collaborations in transnational cases in New Mexico that result in significant delays in permanency. One significant problem is that when a parent is located in another country, PSD has difficulty serving the parent with notice of proceedings and relevant court documents. There have been questions around the sufficiency of serving the foreign consulate with notice in lieu of the parent respondent, and other questions regarding the requirement for publication on a parent living in another country.

One issue that creates barriers to permanency arises in attempts to effectively involve the parent residing out of country in case planning and attending court hearings concerning their child. In scarce circumstances, PSD has been able to petition and obtain day passes from Customs and Border Patrol (CBP) for parents to appear in court. If a parent has had any history with criminal or immigration proceedings in the United States, this petition is not an option. While passes are sometimes granted, the lengthy process involved in obtaining the pass often creates the need to delay court proceedings, resulting in delays in achieving permanency. In transnational cases, PSD has had intermittent success in relying on foreign child welfare agencies to provide services identified in PSD court mandated case plans. However, many court plans implemented in foreign countries have not been completed due to systematic differences in services and policies, and in many cases a parent’s lack of access to adequate behavioral health, parenting, and substance abuse services in another country.

New Mexico’s situation on the border intensifies many issues related to cross-system collaboration and permanency planning. A common border phenomenon posing a challenge to PSD occurs when U.S. citizens cross the border to Mexico and give birth there. Mexico’s system for birth registry
differs from the U.S. system in that hospitals in Mexico do not register and create birth certificates when children are born. The responsibility to register a birth and create a birth certificate with Mexico’s civil registry falls on the parent subsequent to the birth. In several PSD cases, child births were not registered by parents in Mexico, and on return to the United States, parents did not register the child or adjust status with U.S. authorities, making a birth record non-existent. When these children come into PSD custody, it is known that they should derive U.S. citizenship through their parents, but if no birth record exists, it cannot be proven. Some cases of this nature have resulted in years of delay in finalizing adoptions and gaining access to federal funds for these children. PSD has had to work creatively with other government agencies to create permanency depending on individual circumstances. Creative solutions have included the creation of a New Mexico birth certificate court-ordered by a district judge, obtaining a foreign passport or border entry information through the U.S. Department of State, and DNA tests-court ordered and conducted for parents and children to prove citizenship.

Occasionally, PSD receives custody of U.S. citizen children who have been taken into custody in border cities in Mexico and returned to New Mexico when they are determined to have been abandoned, kidnapped, or abused by parents who had taken them across the border. Other cases involve children who come into custody in New Mexico for abuse or neglect while in the care of friends or family after their parents’ deportation. Other times children come into custody after living with caregivers whose parents believe that the children are “better off” living and attending school in New Mexico while visiting with parents across the border on holidays and weekends. Cases become extremely complicated when part of a family lives in a border town in Mexico, and some members live, attend school, and work on the U.S. side of the border during the day or during part of the week. PSD is limited in options for responding to the needs of these families because workers may not travel to Mexico to complete investigations and supervise visits between parents and children. Likewise, foster parents are not permitted to take foster children across the border to run errands, as PSD has no jurisdiction over a child once they have crossed the border to Mexico.

Another area of contention in case planning with parents in Mexico is in the ability to carry out visitation mandates between parents and children. Local offices in border towns with Mexico have worked diligently to overcome this obstacle and have had intermittent success in facilitating parent-child visits at the Port of Entry building in Columbus, NM, a U.S. federal building. PSD has received permission from local CBP officials to conduct visits and depositions in the public lobby area of the building. However, no clear policy exists within the Department of Homeland Security that would establish protocol and guidelines on visitation of this sort.
In addition to a variety of logical challenges, PSD faces some serious ethical dilemmas in the decision-making process in transnational cases. A great predicament revolves around placement decisions for children and how best interest is defined and determined in these cases. In general, when foreign national children enter into custody due to separation from their parents, the primary goal is to reunify them with their parents and maintain family unity, as long as no significant safety risks are identified. However, circumstances become complicated when the definition of best interest is expanded to consider a child’s well-being in terms of language, culture, education, opportunity, and legal permanency. For example, in cases in which children are U.S. citizens, having been born and lived in the United States their entire lives, reunifying them with one or both parents may involve moving them to a country and culture unknown to them, separating them from all known sources of strength and support. In other cases involving abuse and neglect, reunification of children with undocumented parents residing in the United States may pose a risk to child well-being and stability if the parent does not have legal permanency in the United States. In such cases, children could potentially be set up for additional trauma due to separation from parents and loss of a primary caregiver if the undocumented parent is detained and/or deported. PSD aims to prevent personal value judgments and decisions made from a biased cultural lens from determining outcomes in transnational cases by maintaining the principle of family unity as a primary factor in defining best interest.

ACHIEVEMENTS IN NEW MEXICO

PSD has quickly evolved to address many of the aforementioned challenges and growing needs of the immigrant population in the child welfare system in New Mexico. Some offices around the state, mostly in the border region, have been informally working with undocumented and mixed status families for years, and have ensured quality practices by maintaining the principle of family unity at the forefront of their decision-making process. In other rural areas of the state, child welfare offices are just beginning to see their first cases with immigrants. PSD is diligently evaluating recommendations and adapting local practices into workable policies and procedures and implementing them around the state.3

As part of a multi-pronged approach to addressing issues and needs of immigrant families in the child welfare system, New Mexico has introduced and revised key policies related to immigration mandates in PSD’s regulations, currently pending publication. Additionally, New Mexico has recently formalized previously informal relationships with representatives from critical partnering agencies such as the Consulate General of Mexico in El Paso (presiding over the nine southern New Mexico counties), the
Consulate of Mexico in Albuquerque (with jurisdiction over the remaining 24 counties), and child protection partners in Mexico, the Procuraduría para la Defensa del Menor, la Mujer y la Familia (PDMMF, Office for the Defense of Children, Women and Families), a division of the Desarrollo Integral de La Familia (DIF). PSD is using this formal agreement as a foundation for a strong program for working with immigrants from all countries.

Memorandum of Understanding

The “Memorandum of Understanding between the Consulate General of Mexico in El Paso, the Consulate of Mexico in Albuquerque, and PSD regarding consular functions in custody proceedings involving Mexican minors as well as mutual collaboration” (herein referred to as MOU) was signed on March 5, 2009, after over a year of negotiations. This agreement served as a catalyst around which PSD has built infrastructure and standards for working with all immigrant families. This MOU is unique in that it defines multiple areas of collaborative policies and protocols, casework, outreach activities and a working relationship to address partnerships as future needs dictate. Key provisions of the MOU include the determination of Mexican nationality, terms for consular notification and access, interviewing of a Mexican minor, and various areas for mutual collaboration.

According to the MOU, and in concordance with the Mexican Constitution, a “Mexican national” is any person who was born in Mexico or elsewhere of at least one Mexican national parent, regardless of immigration status in the United States. PSD’s policy regarding foreign national children, with its basis in international law, the Vienna Convention on Consular Relations of 1967, mandates that when given custody of a foreign national child, PSD will notify the foreign consulate in writing without delay after obtaining custody. PSD recently expanded procedure to include notice to a central PSD immigration liaison when PSD receives custody of a U.S. citizen child with at least one parent who is a foreign national, to determine whether it is in the child’s best interest to notify the foreign consulate pertaining to the parent’s national origin. PSD’s policy on consular notification has been further enhanced to mandate notification when PSD receives custody of a Mexican citizen child or of a U.S. citizen who has at least one parent who is a Mexican citizen. The MOU specifies that if PSD is unaware of a child’s Mexican nationality and learns at a later time that a child is a Mexican national, the notification will be forwarded to the Consulate on discovery of Mexican nationality. It further establishes that allowable case information will be shared with the Mexican Consulate for the purposes of service and intervention. In response to this strengthened partnership, the New Mexico Children’s Code statute was revised in 2009 to give access to and share confidential case related information with foreign consulates for the purpose of service (New Mexico Children’s Code, 1978).
Additionally, the MOU has established procedures for working together with DIF in locating parents and family members of Mexican minors who come into PSD’s custody and require placements. It develops a path for obtaining relevant documents, such as birth certificates, medical records and other necessary information to assist in locating relatives and facilitating prompt resolution of cases involving Mexican minors in PSD custody. It establishes a method to formally request investigation of potential placements in Mexico for Mexican minors in PSD custody, including socioeconomic home studies, psychological evaluations, substance abuse evaluations, and the monitoring of placements in Mexico. It provides for collaboration on cases in which Mexican national parents are residing in Mexico and wish to participate in court hearings, treatment plans, and visitation.

The MOU also defines the process for collaboration in the repatriation of Mexican minors in appropriate circumstances to parents or relatives in Mexico. It defines collaboration where a parent may have crossed the border with the intention of evading local authorities and laws involving child abuse. It also provides for cross-agency collaboration on cases in which Mexican parents have children who are born in a U.S. hospital in New Mexico or receive medical care in New Mexico. The MOU pronounces consular support and assistance in providing documentation for immigration relief options, such as Special Immigrant Juvenile status, or the U-visas or T-visas for victims of domestic violence, trafficking or other severe crimes, available to eligible Mexican nationals involved with PSD.

Finally, the MOU encourages joint participation in outreach activities, such as mobile consulates and information sessions with immigrant-serving providers and communities. This enhanced case collaboration has lead to the Mexican Consulate’s inclusion in some PSD court hearings, facilitated family centered meetings, and other realms of service planning.

Special Immigrant Juvenile Status (SIJS)

SIJS is an immigration status created by federal law that provides a basis for eligible foreign national children in PSD custody to become lawful permanent residents of the United States. In 2009, the New Mexico Children’s Code statute added a section on SIJS and defined roles and time-frames for PSD, attorneys, and the courts in applying for and obtaining SIJS for children in care (New Mexico Children’s Code, 1978). Simultaneously, PSD revised policy (pending publication), created new procedures and developed a resource and instruction guide for staff involved in this process of identifying and filing for eligible children (State of New Mexico, 2009a).

This change has been significant as it has created greater assurance that any child eligible for SIJS will be identified and has achieved greater precision and efficiency in the application process. PSD’s experience has
demonstrated that if children eligible for SIJS are not identified in a timely manner, it creates challenges for permanency and the child’s well-being. Until recently, no specific guidelines around SIJS existed in New Mexico. Individual caseworkers were responsible for identifying and applying for SIJS for eligible children, and it is suspected that over time some eligible children emancipated or were adopted from the foster care system without obtaining legal permanency resident status, leaving them with an undocumented status.

Immigration Liaison

PSD has responded aggressively to the need for a specialized set of skills and a deeper understanding of legal requirements concerning the immigrant population with the creation of a centralized immigration liaison position. In the past year, the immigration liaison has provided training statewide to all workers on best practice in working with immigrant families and forms of immigration relief available. The liaison has served as a coach and resource to front-line workers in staffing cases in terms of immigration and cultural issues, has assisted in locating interpretation services, and translated key documents. The liaison has provided consultation in evaluating eligibility and pursuing immigration relief for children and families involved in the system. The liaison has served as a referral source for immigration assistance and a link to governmental agencies such as foreign consulates, United States Citizenship and Immigration Services (USCIS), and ICE.

In considering the most successful practices around the country and needs in New Mexico, PSD designated the immigration liaison to manage all SIJS applications involving undocumented children in custody. The immigration liaison plays a key role in the SIJS process, and communicates with the caseworker and child, if appropriate, throughout the entire process. If any risk to applying is identified, the immigration liaison consults with an immigration attorney as to how to proceed with the application. The immigration liaison files the application as the child’s representative. The liaison also attends USCIS adjustment of status interview as the child’s representative with the child and the caseworker.

The role of the immigration liaison continues to expand as efforts are made to engage community partners in providing resources and assistance in cases involving immigrant families. PSD has recently partnered with a state university to create the capacity for law students specializing in immigration law to participate in student internships to assist with SIJS cases under the supervision of PSD’s legal department and immigration liaison. The agency has also initiated communications with local USCIS offices in New Mexico to provide training to PSD staff on the process and required documentation for obtaining various forms of immigration relief available to immigrant clients.
Central Data Tracking System

PSD has developed a centralized tracking system to collect data on key case variables to identify patterns and ongoing needs in working with immigrants in various demographic areas of the state. The purpose of this database is to collect information concerning immigrant children and families in order to assist in determining eligibility for certain benefits and programs, comply with requirements for consular notification, and best utilize all available specialized resources to serve them. Data on undocumented children in custody is obtained through an existing internal data report on Title IV-E eligibility by filtering for a code designated for IV-E ineligible children due to legal status. Data on other non-U.S. citizen children and parents is compiled from various reporting sources. Copies of all consular notification forms regarding legal status for parents and children are provided by field offices to the immigration liaison. PSD’s Title IV-E specialists send reports on parent and child legal status to the immigration liaison when determining IV-E eligibility at the onset of a case. In addition, local county office management sends monthly reports to the immigration liaison updating to their lists of cases involving foreign nationals. The immigration liaison utilizes all of these reporting sources to compile and verify the legal status of parents and their children in care.

CONCLUSION

Although PSD has made tremendous progress in establishing formal mechanisms to address the increasing needs of immigrant families in the child welfare system, the work is far from complete. One long-term goal is to integrate data regarding immigration into the central statewide data management system for federal reporting in order to ensure greater reliability of the data collected.

Another work in progress lies in addressing barriers to effective service on the border. It is imperative that PSD receive collaboration from divisions of DHS and establish mutual protocols on specific border issues impacting the child welfare system. These protocols might include permission for border crossing cards for court hearings, medical appointments, and visits; visits at the CBP Port of Entry buildings; immunity to state child welfare workers for transport of undocumented children in custody of the state; procedures for an official exchange of children at border crossing between New Mexico and Mexico child welfare agencies; and collaboration in scheduled immigration raids so that PSD is prepared to respond.

PSD is also exploring the possibility of establishing official protocols with DIF, the national child welfare agency in Mexico, and hospitals in New Mexico regarding “border babies,” to reinforce the position that abuse cases involving babies born in U.S. hospitals on the border to Mexican nationals
who do not reside in the United States be directed to DIF, unless DIF identifies that the baby would not be safe if returned to family members or kin in Mexico. Such a protocol would also need to address cases of Mexican children whose families reside in Mexico who are receiving medical care at U.S. hospitals. Ideally, this protocol would also include a stipulation that directs schools in U.S. border towns to contact DIF directly for concerns about the home lives of children living in Mexico who attend school in the United States.

PSD continues to explore opportunities to offer advanced and ongoing training within the agency on issues regarding immigrant children and families, effective practices, and federal and state laws that affect them. PSD also recognizes the need to augment targeted training for bilingual and bicultural staff to create expert workers and streamline cases involving immigrants in every region of the state to increase the ability to provide quality services.

While multidisciplinary immigrant outreach events are becoming more common across the state, it would be beneficial to expand PSD’s use of positions that involve community outreach to develop more connections with immigrant community service providers. PSD would also benefit from increasing targeted efforts to involve immigrant community members in citizen review boards, Court Appointed Special Advocates, and recruitment of foster and adoptive parents in the immigrant community.

The New Mexico child welfare system struggles with ongoing challenges in the intersection of child welfare and migration that are well documented across the nation, and also possesses a unique border state perspective. New Mexico has made significant strides in recent years in adapting the child welfare system to enhance response and intervention with immigrant families in the state through changes to policy, procedure and organization, and through strengthening cross-disciplinary partnerships with immigrant serving agencies. Though the work is not complete, PSD has a plan of action to diligently address the barriers that remain, has identified a clear set of goals to be achieved, and will continue to engage public and private partners to reinforce the strengthening of and advocacy for immigrant families in New Mexico.

NOTES

1. For specific examples of media coverage of immigration enforcement activities in New Mexico, please contact the author.

2. In one case, PSD received custody of a US citizen child directly from ICE on the detainment and eventual deportation of the child’s mother in their home. This mother had not committed serious crimes, but the PSD worker was informed by the ICE agent that the agent was required to give custody of US-citizen children to the local child welfare agency on detainment of an undocumented parent.

3. To obtain examples of policy examples or copies of public documents, please contact the author.
REFERENCES


and innovative practices. Paper presented at 2010 New Mexico Children’s Law Institute, Albuquerque, NM.


**CONTRIBUTORS**

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