Beyond Cultural Competence: Language Access and Latino Civil Rights

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Social services remain largely unresponsive to the values and needs of Latino families, who often need Spanish-language services. This article discusses access to linguistically appropriate services, not just as a culturally competent practice, but also as a civil rights issue. Spanish speakers have protection from discrimination in federally funded human services under Title VI of the Civil Rights Law of 1964. The article discusses implications for all aspects of private and public child welfare, including investigations, foster care, family preservation, adoption, and quality assurance.
According to recent Census estimates, Latinos* represent the largest growing ethnic group in the nation (Guzman, 2001). Latinos are also a growing presence in every sector, including health and social services. Unlike the corporate sector, which has recognized the value of its Spanish-speaking market, social services have been generally unresponsive to the values and needs of Latino families, even to the most basic need of communication in Spanish.

Although the current cultural competence trend has haphazardly addressed linguistic issues, no real sanctions exist for culturally incompetent practices and policies, despite their being essentially discriminatory. Under the provisions of Title VI of the Civil Rights Act of 1964, however, individuals with limited English proficiency (LEP) are guaranteed language access as a civil right and have protection from discrimination in federally funded human services. The implications of Title VI guidelines for health services are obvious, but they have seldom been addressed for child welfare. This article explores the application of Title VI for child welfare within the context of Latino children and families.

Latinos: A Growing Presence in the National Landscape

According to Census figures, approximately one in eight people, or 12.5% of the total U.S. population, is of Hispanic origin (Guzman, 2001). A total of 35.3 million Latinos live in the United States, representing a 57.93% increase from the 22.4 million Hispanics reported in the 1990 Census (Guzman, 2001). An additional 3.8 million Hispanics live in Puerto Rico (Guzman, 2001). Latinos can be of any race and have ties to many countries in Latin America (see Table 1). Although national estimates indicate that 58% of Latinos in the United States are of Mexican descent, population profiles differ widely by region.

* Latino and Hispanic are used interchangeably throughout the article to denote individuals whose ancestry is linked to one of the Spanish- or Portuguese-speaking countries in the Americas. Hispanic is the official term used by the U.S. government.
This growth is evidenced even more sharply in the Hispanic child population, resulting in dramatic shifts in the U.S. child population. A recent fact sheet issued by the National Council of Latino Executives (NCLE, 2001) states that according to 2000 Census data, 12.5 million Latino children live in the United States. Latino children are the second-largest group of children in the nation, compared with 44 million children who are non-Hispanic white and 10.8 million who are non-Hispanic black (NCLE, 2001). It is estimated that by 2005, the number of Latino children will grow by almost 30% (NCLE, 2001). By 2020, the Hispanic teen population will grow 62%, compared with 10% for non-Hispanics (Brotman, 2002). Overall, Hispanics are younger than other groups in the nation, with a median age of 25.9 years, compared with the median age of the general population, which is 35.3 (National Council of La Raza, 2001). About 36% of the Latino population is younger than 18 years old (National Council of La Raza, 2001).

Because of the family orientation that is a guiding value in Latino cultures, it is not surprising that 65% of Latino children grow up in two-parent homes and are more likely than other children to be living in a large household (five or more people) (Therrien & Ramirez, 2000). Despite a strong family orientation and work ethic, however, many Latinos are poor, face high levels
of stress, have low levels of education, and have low levels of health insurance. In 1999, 22.8% of Latinos were living in poverty, compared with about 7.7% of non-Hispanic whites (Therrien & Ramirez, 2000). About 30.3% of Latino children live under the poverty threshold (Therrien & Ramirez, 2000). The alarming statistics concerning Latino school desertion are well known. Estimates from the 2000 Census showed that only 57% of Hispanics age 25 and older had at least a high school education, compared with 88.4% of non-Latino whites (Guzman, 2001). Also, 27.3% of Hispanics had less than a ninth-grade education, compared with 4.2% of non-Hispanic whites (Guzman, 2001).

These factors, combined with discrimination and marginalization, create stressful conditions for Latino families, who, despite strong sociocultural supports, are increasingly coming into contact with child welfare agencies.

An accurate estimate of how many Latino families are involved in the child welfare system is problematic because data on Latino children and child welfare are still scarce and unreliable (NCLE, 2001; Ortega, Guilleen, & Gutierrez Najera, 1996). Only since implementation of the Adoption and Foster Care Analysis Reporting System (AFCARS) has the government required all states to collect child welfare information on Hispanics as a distinct category. For most states, however, identification of Latinos remains a challenge, confusion regarding race and ethnicity variables is common, and difficulties in accurate reporting abound. According to the best estimates available from AFCARS data, 568,000 children were in foster care as of September 30, 1999, of whom 36% were non-Hispanic white, 42% were non-Hispanic black, 15% were Hispanic, and 7% were other races or ethnicities. That the total Latino foster care population almost doubled to 15% from the 8% reported in 1990 is alarming because both figures probably represent undercounts (Suleiman Gonzalez, 2002).

Available data show that Latino children are a significant segment of the child welfare population in several key states.
(Suleiman Gonzalez, 2002; U.S. Department of Health and Human Services [USDHHS], 2001). Latinos have a large presence in some states' foster care populations—56% in New Mexico, 32% in Connecticut, 31% in California, 31% in Texas, and 27% in Arizona (NCLE, 2001). Latino children are sometimes overrepresented in the child welfare system, such as in Connecticut, where they represent 12% of the general child population but 32% of children in foster care, or in Utah, where the estimates are 8% and 14%, respectively (Suleiman Gonzalez, 2002).

The concentration of Latinos in urban centers contributes to the high proportion of Latino child welfare cases in specific cities, such as New York, where Latino children make up about 25% of the foster care population and come from families representing a range of immigration statuses (Committee for Hispanic Children and Families, 2001). But the Latino population is also growing in nontraditional Latino states and rural centers such as Nevada, North Carolina, and Ohio, presenting a serious challenge to child welfare systems with little experience with LEP populations but are required by law to meet their communication needs.

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**Language Access and Latino Civil Rights**

Although cultural competence work includes language as an aspect of culture, it has not been successful in framing effective communication and removal of language barriers as essential to meaningful access to services. Meaningful access to services for individuals with LEP is guaranteed under Title VI of the Civil Rights Act of 1964,* however, making language-appropriate services a matter of civil rights and not just cultural competence. Accordingly, unlike cultural competence, noncompliance with Title VI carries penalties enforceable by the Office of Civil Rights. In August 2000, former President Clinton issued Executive Or-

* For more information on Title VI of the Civil Rights Act of 1964 and limited English proficiency guidelines, visit the Office of Civil Rights website at http://www.hhs.gov/ocr/lep/.
der 13166 to reiterate that federal agencies and programs receiving federal funds must establish written policies on the language accessibility of services to people with LEP.

Because of their national origin and LEP, many Latinos face language barriers that result in exclusion from or discrimination in services. Section 601 of Title VI clearly states that

no person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (USDHHS, 2002)

Language barriers can result in exclusion from programs or delay or denial in services from federally funded agencies or its subcontractors. Such exclusions, delays, or denials may constitute discrimination on the basis of national origin, a violation of Title VI.

Effective communication is the key to ensuring equal access to benefits and services for LEP children and families. The client should be able to: (a) understand information about the services and process, (b) understand the resources and services available to address the particular situation, and (c) communicate with the service provider. From a child welfare perspective, this requirement is congruent with the principles of good social service, because a helping relationship depends on meaningful communication between the provider and the client.

Federally funded agencies, including third-party entities, are required to have a written policy on language accessibility. Federally funded agencies, however, have broad discretion in addressing the communication needs of the particular LEP population within the community being served. An agency may hire bilingual staff, hire staff interpreters, use volunteer interpreters, contract with an interpreter service (i.e., AT&T Language Line), and/or partner with Latino community-based agencies. The strategy for meeting language needs should correspond to the spe-
pecific demands of the situation. For example, if 30% of residents in
the agency's catchment area speak Spanish, it would make more
sense for an agency to hire bilingual staff or subcontract with
Latino agencies than to rely on phone interpretation. Especially
in therapy situations, a phone interpreter could compromise the
quality of the interaction.

If using interpreters is an appropriate strategy, then accord-
ing to Title VI guidelines, the interpreters should meet certain
competency requirements: (a) proficiency in both English and the
other language, (b) training on the ethics of interpreting, and (c)
knowledge in both languages of any specialized terms and con-
cepts in the particular field.

In an emergency health care situation, effective communica-
tion can mean the difference between life and death. Research
has identified language barriers as a factor in the wide health
disparities in minority populations. It is just as critical, however,
to explore the role played by language throughout the child wel-
fare system (at the front end, in the system, and at the back end),
because it could mean the difference between life and death for a
child or between the well-being and the breakdown of a family.
As Latino children enter the system in increasing numbers, ac-
cessibility to Spanish-language services becomes a key factor in
the ability of families to successfully navigate the child welfare
system and connect to the supports they need to thrive. LEP
should not delay or exclude Latino families from access to these
resources.

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**Language Access and Latino Child Welfare**

Much of the research on child welfare and Latinos has focused
on differential patterns of abuse compared with other racial or
ethnic groups (Hampton, 1987; Lindholm & Willey, 1986), cul-
tural factors in child maltreatment interventions (Derezotes &
Snowden, 1990), and cultural differences and clinical profiles of
child abuse within the Latino community (Navarro & Miranda,
192 CHILD WELFARE "Vol. LXXXII, #2 - March/April 1985; Reid, 1984). Although research on ethnic group differences is helpful in understanding the magnitude of the problem across groups, it is less useful in illustrating the systemic issues of language access discussed here.

In the general mental health literature, however, research has identified language barriers as a factor in Hispanic underutilization of social services (Gomez, Ruiz, & Rumbaut, 1985), and researchers have widely discussed the implications of language for counseling (Comas-Diaz & Griffith, 1988; Gonzalez, F., 1995; Gonzalez, G. M., 1997). Malgady, Rogler, and Constantino (1987) wrote extensively on the role of language in assessment and counseling, noting that meaningful communication is critical in accurate assessment and effective therapeutic practices. Although more empirical research is needed in all areas of Latino mental health (Vega & Lopez, 2001), successful family outcomes in child welfare clearly are contingent on effective communication throughout the life of a case.

Figure 1 shows a simplified chart of the child welfare system to facilitate discussion of language issues throughout the system. For example, at the front end of the system, the investigation is a pivotal part of the process, in which workers make risk assessments and initial placement decisions. If nuclear and extended family members are Spanish speaking, the investigator should be able to communicate with them in Spanish. In areas with substantial Latino populations, agencies should have enough bilingual investigators to conduct these initial assessments.

Even if parents are English speaking or bilingual, extended family members (i.e., grandmothers, aunts, etc.) may speak only Spanish. The ability to communicate with Spanish-speaking relatives will likely lead to a more accurate assessment and improved placement options. Unfortunately, in an effort to complete the investigation, non-Spanish-speaking child protection workers may rely on neighbors or relatives to act as interpreters with Spanish-speaking families. Serious confidentiality and ethical issues
**Figure 1**
Child Welfare Services to Latinos and Language Access

**Front End**
Reporting and Investigating
Oral and written communications in Spanish. Investigation is conducted in Spanish.

**In the System**
Substitute Care, Intact Family, etc.

**Back End, Case Outcome**
Reunification, Adoption, Guardianship, Independent
Oral and written communications in Spanish. Language issues not barrier to reunification. Spanish language services available.

**Legal System**
Courts, Policies, Regulations, and Procedures

**Quality Assurance (QA) and Quality Improvement**
QA tools include language indicators. Data on Latinos and language are tracked efficiently. Accountability indicators for agency and vendors include language access.
emerge when nonbilingual investigators rely on neighbors or relatives as interpreters, not to mention questions about the level of accuracy and validity of the information being collected.

Perhaps even more troubling is the practice of using children as translators for their parents. In the best-case scenario, children are unfairly placed in a position of bearing responsibility for the futures of their families. In the worst-case scenario, a child victim may be put in the position of translating for parents who may have committed the abuse. In either case, this constitutes an ethical problem in practice and a civil rights violation.

Additional concerns at the front end include whether the Spanish-speaking community has the same access to information on the prevention, identification, and reporting of child abuse (Herrerías, 1988). In addition to information, any prevention programs available to English speakers should be accessible to Spanish-speaking families, and enough capacity should exist to handle child abuse reports in Spanish.

Once the family has come into the system, a number of concerns related to language emerge; chief among these is whether sufficient bilingual workers are employed and whether they are being assigned to the cases where there is a need for Spanish. Just as critical is whether the family understands the process and their right to Spanish-language services. If parents or other caregivers (kinship or foster care) are Spanish speaking, then case reviews, case plans, and correspondence should be also be in Spanish. Family preservation services should be available and accessible in Spanish in a way that is comparable to what is available for English-speaking families.

A growing body of literature identifies the role of cultural factors in successful mental health services with Latinos, and language is undeniably a key dimension of culture (Altarriba & Santiago-Rivera, 1994; Comas-Diaz & Griffith, 1988; Gonzalez, F., 1995). If Spanish-language services are available but limited, such as having long waiting lists or distant locations, this may
result in delays that could adversely affect case disposition and constitute discrimination.

Many additional issues should be considered when children are taken into custody and placed in substitute care:

- recruiting and placing children in Spanish-speaking foster homes,
- employing Spanish-speaking personnel in residential facilities,
- providing child welfare services (clinical and collateral) in Spanish,
- allowing parents and children to speak Spanish during visits,
- conducting psychosocial assessments in Spanish,
- identifying Spanish-speaking kin or relative caregivers and providing appropriate services, and
- identifying Spanish-speaking fathers in bicultural families and including them in case planning.

Even if the child in custody is bilingual and can function in English-language settings, the practice of placing children from Spanish-speaking families in English-only placements is detrimental to family communication and cohesion and undermines reunification efforts. This is exacerbated when young or preverbal children from Spanish-speaking homes are placed in English-only homes. Moreover, without adequate access to a full range of bilingual or Spanish services, satisfactory compliance with the service plan is compromised and, therefore, reunification is threatened. This is a no-win situation for Spanish-speaking families, who are mandated to participate in services that are not available and then are penalized for noncompliance. The burden is on the federally funded agency and its subcontractors to ensure that communication needs are being met.

Limited Spanish-language services have a tremendous effect on the success of family reunification efforts at the back end, creating a challenge for Spanish-speaking families trying to meet
strict time limits under the Adoption and Safe Families Act. Without adequate language services, how many cases result in termination of parental rights of Spanish-speaking parents? Spanish-speaking parents should be able to understand termination proceedings, and Spanish-speaking caregivers should be able to participate fully in case disposition meetings. For Spanish-speaking youth aging out of the system, adequate independent living services should be provided.

Throughout the life of a case, quality assurance and quality improvement mechanisms can be invaluable in identifying and correcting problems related to language access. Management information systems should be designed to capture data related to language and ethnicity that could be helpful in monitoring service quality and case outcomes for children and families. Including language and cultural indicators in outcome and performance measures (i.e., case review protocols, client satisfaction surveys, etc.) would generate data that would be useful in planning and increasing agency and subcontractor accountability. Better training and staff development initiatives could be implemented as part of continuous learning and quality improvement efforts.

Finally, the legal system plays an increasingly critical role in determining what happens to families in the child welfare system. The courts make many decisions that affect Latino families with little or no consideration of language access. In clear violation of Title VI, often no policies are in place to guide procedures related to meaningful communication. A grave need exists nationwide for capable legal representation of Spanish-speaking families. Hearings and other meetings with lawyers, guardians, and court advocates should be in Spanish. In jurisdictions with a substantial Latino caseload, the public guardian should have bilingual staff, and court interpreters should be available for legal proceedings.

Broadly defined to include policies, the legal system has an important function in ensuring Latino civil rights in child welfare. Community advocates challenged compliance with Title VI
provisions in Illinois when they filed a class action lawsuit in behalf of the Burgos family and other Hispanic families more than 25 years ago. The suit was settled with the Burgos consent decree* of 1977. The plaintiffs argued that Spanish-speaking Hispanic families were excluded from full participation, denied the benefits of participation, and subjected to discrimination on the basis of their national origin.

Essentially, the Burgos consent decree requires that the Illinois Department of Children and Family Services (IDCFS) provide Hispanic families who are Spanish speaking full and adequate services, including placing children from Spanish-speaking families in Spanish-language placements. IDCFS developed a framework that addresses: (a) language, translation, and communication needs; (b) availability, access, and monitoring of bilingual services; (c) placement violations, substitute care resource development, and monitoring; (d) training and staff development, and (e) data requirements and database management.

This approach differs from stop-gap measures that address language access only at the case-level interaction. Lessons learned in Burgos compliance suggest that without this comprehensive approach, there can be no guarantee that adequate language access is actually available at the front-line level. Hiring more bilingual workers may increase capacity somewhat, but without the infrastructure to support this work, retention of bilingual workers will be threatened. Bilingual workers need management support, strong working relationships with others who understand language issues, adequate resources, and a culturally responsive policy environment to provide high-quality services. The most committed, well-qualified worker risks burnout if he or she does not have an infrastructure of support for language-appropriate services.

When all levels of an organization implement a comprehensive approach, the system is transformed in its ability to address language issues. Subsequently, the system has the capacity to meet

* For more information on the Burgos consent decree, contact the author.
the needs of Latino families. For Spanish-speaking children and their families, this translates into better access, better quality of services, and better chances for successful outcomes.

Language is much more than a communication system. It is in part the way we live our culture, transmit our traditions from generation to generation, and maintain connections to our families. Without the ties of a common language that can bind us as families, the family itself is destroyed. Ethical and legal ramifications exist for not addressing language barriers, and we should frame our discussion regarding responsive services to Latinos under this edict. Language access extends beyond the concept of cultural competence; to deny, delay, or discriminate on the basis of language is to violate the fundamental civil rights of Latino children and families.

References


