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Vivek S. Sankaran

University of Michigan Law School, vss@umich.edu

Patricia L. Rideout

Cuyahoga County Division of Children and Family Services

Martha L. Raimon

Center for the Study of Social Policy

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Strange Bedfellows



How Child Welfare Agencies Can Benefit from Investing in Multidisciplinary Parent Representation

Vivek S. Sankaran, Patricia L. Rideout and Martha L. Raimon*

This is the second of a series of articles that examines the role that advocates for parents and families can play in furthering the well-being and safety of children. This article highlights emerging parent representation models that expedite the safe reunification of children already in foster care.

* Vivek S. Sankaran is a clinical professor of law and directs the Child Advocacy Law Clinic at The University of Michigan Law School. Patricia L. Rideout is the former administrator of the Cuyahoga County Division of Children and Family Services. Martha L. Raimon is a senior associate at the Center for the Study of Social Policy.

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Effective child welfare leaders are not interested in adversarial relationships with parents or their attorneys. They are invested in accomplishing their mission: making sure children, youth and families get what they need so that every child can grow up in a safe and stable family.

*Patricia L. Rideout, Former Administrator,
Cuyahoga County, Ohio, Division of Children and Family Services*

After the child welfare agency removed Maria's three children and placed them in foster care, Maria sank into despair. She was confused about why her children were taken from her. She could not understand the legal jargon on the paperwork given to her. She did not know why everyone refused to tell her where her children were and when she could see them next. By the time of the first court hearing, Maria was angry, upset and frustrated. She wanted nothing to do with the agency that took her children from her.

Child welfare agencies face a humbling task. Their overarching goal is to ensure the safety, permanency and well-being of children in their community, but they

face difficult decisions about when a child's safety is in jeopardy and placement in foster care may be necessary. Understanding the severe consequences for the child and his or her family, they must try, in the first instance, to prevent unnecessary removals of children from their families. When placement into foster care is necessary to ensure the safety of the child, they must work diligently to reunify children with their birth parents. And to do that, they must juggle a number of difficult tasks, such as identifying appropriate placements for children, securing services for parents and arranging visitation.

Yet, to achieve success, agencies must do one thing especially well in every circumstance—*they must effectively engage birth parents in all aspects of case planning*. If parents are not effectively engaged, agencies will too often fail in their efforts to either reunify children with their parents or to achieve another permanency goal for the children.

Effectively engaging with birth parents around this work has been a particularly elusive goal for child welfare agencies. Birth parents like Maria are often skeptical and mistrustful of the intent of the agency to help them get their children home, particularly when the agency has just removed their children from their care. Birth parents may be resistant to forming trusting relationships with caseworkers and may be reluctant to comply with services. Additionally, birth parents face a host of complicated legal and socio-emotional needs that require a significant amount

of time to address, which few caseworkers can provide, given high caseloads, sometimes limited skills and administrative responsibilities. In many jurisdictions, caseworkers are only expected to meet with parents once each month. Predictably, parent engagement remains a strong barrier to child welfare agencies achieving the outcomes they desire for children.

A new and perhaps surprising tool has emerged to assist child welfare agencies to better engage parents and achieve improved outcomes for children—*multidisciplinary parent representation*. Legal offices across the country are providing birth parents with the assistance of a team consisting of a lawyer, social worker and a parent mentor to help guide them through the complexities of a child welfare case. Rather than obstructing child welfare agencies from accomplishing their goals, these multidisciplinary teams are instead furthering agency goals by reducing unnecessary removals of children from their homes, achieving greater rates of reunification and expediting permanency for children – the same outcomes agencies are required to seek by federal law. Initial data from these programs demonstrate the dramatic impact that this type of parent representation can have on outcomes for children.

This article will explore the challenges facing child welfare agencies in engaging parents, suggest how multidisciplinary parent representation can assist them in reaching their goals and encourage child welfare agencies to prioritize strengthening parent representation in their jurisdictions.

Lack of Parent Engagement Undermines the Ability of Child Welfare Agencies to Accomplish Their Goals.

Unlike other types of legal disputes, child welfare proceedings are unique in two major respects. First, at the outset of the case, in most instances all parties in a child welfare case share the same goal: to reunify children with their families. The Constitution of the United States presumes that the interests of children are best served when they are safely cared for by their birth parents.¹ Consistent with this presumption, both federal and state laws not only mandate that child welfare agencies keep children in their homes absent evidence that it would be “contrary to the welfare of the child” but also require agencies to make “reasonable efforts” both to prevent children from being removed and if removed, to expedite the child’s return

back home.² Agencies’ internal policies also reflect the primacy of reunification as their chief goal for those children who are removed from their parents. Thus, in nearly every child welfare case, all parties are legally obligated to work toward the same outcome for the child.

Second, child welfare cases are unique because the legal disputes primarily center on resolving what will happen in the future, as opposed to adjudicating historical facts. Most other legal disputes involve a contest over what happened in the past. Did the defendant rob the bank? Did the company breach the contract? Did the employer discriminate against the worker? Once the

historical facts are settled, the only remaining question is what the precise punishment or remedy will be for the offense. After that, the case is concluded. Neither the court, nor the parties, has an ongoing need to work together within the context of the case.

Child welfare cases are different. In many, the question of what happened in the past plays a minor role in the case. Parents often admit that they have neglected or abused their children in some way, but these admissions do not resolve the case. They simply mark the beginning of the next phase of the case, which often lasts months, if not years. And in this phase, the focus is entirely forward-looking. What should happen in the future? How will the court and the parties work together to return the child home safely? What services will be offered? When will the child be able to return home? Until that happens, how will visitation be structured and the child's needs best be met? Given the parties' shared goal of returning the child to his or her parents, the parties must work together to ensure that this will happen.

But it is not enough for the professionals to work together. A crucial requirement for achieving reunification is engaging parents to remain actively and constructively involved in their child welfare case and in their children's lives. Studies have repeatedly shown that when child welfare agencies are able to work effectively with birth parents, outcomes improve for children.³ Effective engagement involves making parents meaningful partners in case planning, providing them with a voice in the decision-making process and sharing with them the information they need to successfully advocate for themselves and their children.⁴ When this type of engagement occurs, parents are far more receptive to accepting services from child welfare and related agencies.⁵ Additionally, parents who engage with child welfare agencies are more likely to feel hopeful, openly acknowledge problems and become motivated to change.⁶ Unsurprisingly, the U.S. Department of Health and Human Services has observed that "[s]uccessfully involving family members in case planning may be the most critical component for achieving outcomes in child welfare practice."⁷

Yet, despite the consensus about the importance of engaging parents, the goal remains elusive. Recent federal child and family service reviews concluded that every state failed in this area, finding that agencies only involved parents and children in roughly 50 percent of cases.⁸ The federal reviews also found that only 19 states met the national standard for reunifying children with their parents.⁹ In only approximately 50 percent of all child welfare cases do agencies successfully reunify children with their parents.¹⁰

Child welfare agencies struggle to engage parents for a number of reasons.

Many caseworkers are overworked and lack the experience or the time to spend with parents, who often present complicated legal and emotional issues and carry a deep history of trauma.¹¹

A caseworker's ability to engage parents is also impeded by their conflicting roles. Caseworkers often make decisions that result in the separation of the family. They then must work to reunify the same family they helped to separate. Additionally, if the parent fails to make progress on his or her service plan, then the same caseworker tasked with reunifying the family may simultaneously seek to terminate that parent's rights. Thus, understandably, many parents find it very difficult to trust caseworkers.

As a result of these and other dynamics, parents often feel disrespected, excluded from the decision-making process and "helpless and confused in an overly adversarial system."¹² They may refuse to share information with their caseworkers and typically do not view agencies as partners.¹³ Rather, they view caseworkers as authority figures mandating what they must do and watching to see if they comply, exactly the sort of dynamic that undermines the goals of child welfare agencies.¹⁴ So long as this dynamic remains, child welfare agencies will not achieve the best outcomes for children.

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Inadequate Parent Representation Throughout the Country Impedes Child Welfare Systems' Efforts to Engage Parents.

Unfortunately, inadequate parent representation only exacerbates the struggles faced by child welfare agencies to engage parents.

Consider this reality for Maria, the parent described earlier. Before her initial shelter care hearing, she is not greeted by an attorney. Instead, she waits alone outside of the courtroom. When the clerk calls her case, she remains motionless until the clerk tells her to come forward. The judge instructs her that the individual standing beside her is her lawyer. And for the next 10 minutes, a conversation occurs between the lawyers and the judges, none of which Maria comprehends. The clerk then announces a date for the next hearing, and Maria is abruptly hustled out of the courtroom. Just like that, the court has determined that her children remain in foster care. She doesn't know for how long.

She is confused. She is scared. She may not have seen her daughter for days. And her anger intensifies.

Over the next few weeks, her phone calls to her new attorney go unanswered, as do her many questions about what is happening with her daughter. When her caseworker approaches her and asks

her to discuss her case plan and engage in services, Maria shuts down. Yet, the clock dictating when her parental rights will be terminated continues to tick at a steady, rapid pace.

This is the reality faced by many parents in the child welfare system. While most states, but not all, provide parents attorneys in child welfare cases, they have failed to ensure that parents receive adequate legal representation.¹⁵ Consequently, parents' lawyers are underpaid, overworked and inadequately trained.¹⁶ They carry high caseloads. They lack access to experts from other disciplines, like social workers, investigators and parent partners. Rather than spending their time engaging with their clients or advocating for them at important agency meetings, they too often move from hearing to hearing, simply helping to process a case from one stage to the next.

National child advocacy groups have lamented the inadequacy of parents' counsel for many years. For example, a 2005 report by the American Bar Association described parent representation in one state as falling "disturbingly short of standards of practice."¹⁷ Yet, systems have largely failed to respond to this outcry. Although significant reforms have occurred in some jurisdictions to strengthen legal representation in criminal matters, parent representation has received scant attention. But in maintaining the status quo of inadequate parent representation, systems are contributing to the isolation and frustration experienced by parents, further leading to their disengagement with the system.

Child welfare agencies have recently employed a number of innovations to improve their ability to engage parents, including convening team decision-making meetings,¹⁸ employing parent mentors to help parents navigate the system and connecting birth parents and foster parents to ensure that parents remain involved in raising their children even when children are not in their care. But they have yet to recognize the link between strong parent representation and parent engagement. The next section discusses how multidisciplinary parent representation can serve as an important tool to engage parents and reach common goals.

Inadequate parent representation only exacerbates the struggles faced by child welfare agencies to engage parents.



Multidisciplinary Legal Representation Can Be an Effective Tool to Engage Parents.

Consider this alternate reality for Maria. While waiting anxiously in the hallway in front of the courtroom prior to the commencement of her initial shelter care hearing, she is greeted by three members of her new legal team— an attorney, a social worker and a parent mentor. Recognizing her anxiety, her team takes Maria to a private meeting room, where they explain their role, their undivided loyalty to her and their legal obligation to keep their communications confidential unless given Maria's permission. The team also tells Maria about what will happen next in the case, what they will be asking for and what they expect the child welfare agency to request. But most importantly, the team gives Maria a chance to tell her story and to tell them exactly what she wants for herself and her child. Maria has never been given the chance to do this. After the meeting, Maria takes a deep breath and enters the court hearing feeling less angry and more willing to listen to and work with everyone on her case. She feels more willing to engage with the system, knowing that advocates presenting her perspective are on her side and will support her. She also knows that she can rely on her team to advocate for her on an ongoing basis.

Across the country, multidisciplinary parent representation practices, like the one described above, are emerging and place parent engagement at the core of their work. These offices provide parents with the assistance of a team made up of an attorney, a social worker and a parent mentor to help them navigate the child welfare system. Each partner plays a crucial role in helping the parent feel supported and engaged.

The attorney provides quality legal representation to the parent, both inside and outside the courtroom. He or she meets with the client, investigates the facts of the case, counsels the client about the various options and possibilities, advises on what is likely to happen and then zealously advocates for the parent based on the client's goals. The attorney also works with the other players in the case, such as the caseworkers and the children's attorneys, recognizing the need to collaborate around planning for the child and family, while also understanding that there may be times where issues need to be aggressively litigated in the courtroom. Importantly, the attorney, who may be better able to access current information about the family, investigates the

facts of the case and shares relevant information with both the agency and the court to ensure that all players have an accurate understanding about what transpired prior to the filing of the petition. This stands in stark contrast to the typical practice seen across the country.

The social worker on the multidisciplinary team is able to connect with the parent in ways that the agency caseworker cannot because she, unlike the agency caseworker, has undivided loyalty to the parent. Thus, she is able to have honest conversations with the parent about the parent's strengths and challenges and can then work with the parent to find resources to address identified problems. She has more time than the caseworker to locate effective services in the community and then can work closely with the client to access them. The social worker also communicates regularly with the agency caseworker, accompanies the client to agency meetings and ensures that the client's voice is heard.

Finally, the parent mentor, who herself successfully navigated the child welfare system to reunify with her child, provides emotional support to the parent so that her energy can be used productively in service of the legal proceeding. The parent advocate also discusses ways for the parent to productively engage with the system and helps to ensure that the legal team—along with the other players in the system—effectively engage with the parent. The parent advocate provides a consistent reminder to all the stakeholders about the need to tailor the intervention to address the family's identified needs.

Although this new model of parent representation is just emerging, initial data demonstrates the dramatic impact it can have on outcomes for children. For example, the Center for Family Representation (CFR) in New York City,¹⁹ which represents parents using multidisciplinary legal teams, prevented the need for foster care for many children, reduced the length of stay of other children and reduced the rate of children re-entering the system. Data tracked since 2007 demonstrate that more than 50 percent of children of CFR clients avoid foster care placement altogether.²⁰ Where foster care cannot be avoided, the median length of placement for children of parents served by CFR is just

five months compared with a citywide average of nearly a year.²¹ Preliminary data also indicate that children of parents served by CFR re-entered the foster care system after their case was closed at a rate of approximately 1 percent, compared with a statewide foster care re-entry rate of 15 percent.²² Judges working with CFR's multidisciplinary teams noted that because CFR attorneys knew the facts of their cases better and proposed solutions to the court, court orders were better tailored to meet the needs of families.²³

CFR's services are also cost-effective. They cost approximately \$6,500 per family over the entire life of the case, a sum that is vastly less expensive than a single year of foster care for a single child, which can range from \$25,000 to \$60,000 dollars per year, depending on a variety of factors including where and in what kind of setting the agency places the child.²⁴ *Thus, for every child prevented from entering foster care, or for every child whose length of stay is reduced by months, the system can save thousands of dollars.* In fact, since 2007, CFR services have saved the foster care system more than \$30 million.²⁵

The Washington State Office of Public Defense (OPD), which also provides parents with multidisciplinary legal representation, has achieved similar outcomes.²⁶ During a three-year pilot period, data showed that there was an 11 percent increase in the reunification rate in counties served by OPD.²⁷ Data also demonstrated that there was a 104 percent increase in the adoption rate and an 83 percent increase in the guardianship rate in the counties served by OPD, demonstrating that this new model improves all types of child welfare outcomes.²⁸ Researchers found that the increased reunification rate resulted in children spending one less month in foster care; the increased adoption and guardianship rates meant that permanency was accelerated by approximately one year.²⁹ Commentators observed that, as a result of OPD's work, "[p]arents are more willing to engage in services and work with their agency caseworkers, so there are fewer terminations. When families cannot reunify, OPD attorneys advise clients about adoption with contact and guardianship possibilities, and work to negotiate those outcomes."³⁰ Thus, even when reunification may not be possible, multidisciplinary parent representation allows and supports parents to be fully engaged in planning for other options for their children.³¹

The initial data suggest that multidisciplinary parent representation can dramatically improve parent engagement, supporting parents to be partners in the child welfare system's

efforts to help children, and in doing so, improve outcomes for children. More research must be done to demonstrate the effectiveness of these multidisciplinary models, but the unfortunate reality is that this type of legal representation is rare. Instead, the inadequate parent representation that is prevalent often serves as a major impediment to engaging families, and therefore undermines the goals of child welfare agencies.

This is precisely why child welfare agencies must take the lead in creating awareness and advocating for a better system of representation for parents. Child welfare leaders are keenly aware that even children who need to be separated from parents suffer and that agencies must work diligently to reunify children safely with their parents. And child welfare leaders are aware of the research on poor outcomes of children in foster care, especially those children who age out of the system without ever having achieved permanency, and thus they want to see parents succeed. In short, good child welfare leaders are not interested in adversarial relationships with parents and their attorneys, but instead are interested in ensuring that children—and their parents—get the assistance they need.

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A Call to Action

At its best, parent representation can be an effective tool in helping to ensure that all voices are heard in the court process and that parents work in partnership with the child welfare system to jointly plan for the well-being and safety of their children. At its worst, ineffective parent representation can lead to the further isolation parents experience and can impede the innovative efforts being made by agencies. In short, child welfare agencies must seize this opportunity to assist families by supporting and investing in this needed service.

What does it mean for agencies to invest in parent representation? At a minimum, agencies must begin to speak out about the importance of parent representation and how effective parent representation promotes many of the same outcomes sought by agencies, including successful permanency for children. When parent representation offices are advocating for increased funding, child welfare agencies should be allies in their efforts, explaining to legislative bodies how effective advocacy for parents is not tangential to ensuring children's safety and well-being, but is, in fact, crucial to a well-functioning child welfare system.

Nationwide, there are models of child welfare agencies advocating for quality representation for parents. For example:

- In Allegheny County, Pennsylvania, the child welfare agency provides **direct funding** for the representation of parents.
- In the District of Columbia, the Child and Family Services Agency has used **Title IV-E waiver funds** to support legal advocacy for parents prior to the filing of the petition.
- In Cuyahoga County, Ohio, the child welfare agency initiated a campaign to strengthen parent legal representation and the **Ohio Supreme Court** has agreed to fund a parent representation pilot, expected to start in the spring of 2016. These efforts reflect but a few of the ways in which child

welfare agencies can take the lead to address this important issue.

Think back to Maria's story and how the quality of legal representation can affect the trajectory of Maria's case. And think about whether child welfare systems will be able to achieve the best outcomes possible if parents like Maria do not receive adequate legal representation, and therefore, do not fully engage with the system. That is the question before us. And that is the call to action child welfare agencies must answer.

At a minimum, agencies must begin to speak out about the importance of parent representation and how effective parent representation promotes many of the same outcomes sought by agencies, including successful permanency for children

Endnotes

1. See, e.g., *Santosky v. Kramer*, 455 U.S. 745, 753-754; 102 S. Ct. 1388; 71 L. Ed. 2d. 599 (1982).
2. See 42 U.S.C. § 671(a)(15); 42 U.S.C. § 672(a)(2)(A)(ii).
3. Rice, K. & Girvin, H. (2014). Engaging families, building relationships: Strategies for working across systems from a social exchange perspective. *Advances in Social Work*, 15(2), 306–317; *Family Reunification: What the Evidence Shows*. (June 2011). Child Welfare Information Gateway; Cheng, T.C. (2010). Factors associated with reunification: A longitudinal analysis of long term foster care. *Children and Youth Services Review*, 32(10), 1311–1316.
4. Rice & Girvin (2014); Gladstone, J. et al. (2012). Looking at engagement and outcome from the perspectives of child protection workers and parents. *Children and Youth Services Review*, 34(1), 112–118; *Family Reunification: What the Evidence Shows*. (June 2011).
5. Cheng (2010).
6. Gladstone et al. (2012).
7. *Engaging Families in Case Planning*. (September 2012). Child Welfare Information Gateway.
8. Ibid.
9. *Family Reunification: What the Evidence Shows*. (June 2011).
10. Ibid.
11. *The Family Engagement Inventory: A Brief Cross-Disciplinary Synthesis*. (August 2014). Child Welfare Information Gateway.
12. Darlington, Y., Healy, K. & Feeney, J. (2010). Challenges in implementing participatory practice in child protection: A contingency approach, *Children and Youth Services Review*, 32(7)1020–1027.
13. *Family Reunification: What the Evidence Shows*. (June 2011).
14. Darlington et al. (2010).
15. For an overview of the ways in which states are inadequately providing parent representation, see Sankaran, V. (2011). No harm, no foul? Why harmless error analysis should not be used to review wrongful denials of counsel to parents in child welfare cases. *South Carolina Law Review*, 63(1), 13–41.
16. See, e.g., Minnesota Judicial Branch. (November 2008) *Report of Children's Justice Initiative Parent Legal Representation Workgroup to Minnesota Judicial Council*, available at <http://www.leg.state.mn.us/docs/2009/other/090151.pdf> (noting that “[t]here is no statewide funding and no standards of practice for attorneys representing parents.”); Outley, A. (2004). *Representation for Children and Parents in Dependency Proceedings*, available at http://www.pewtrusts.org/our_work_report_detail.aspx?id=49014 (noting that almost three-fourths of court-improvement specialists believed that attorneys for parents were not adequately compensated); Giving overmatched parents a chance [Opinion]. (June 17, 1996). *New York Times*, A14, available at <http://www.nytimes.com/1996/06/17/opinion/giving-overmatched-parents-a-chance.html> (observing that “parents are generally stuck with harried court-appointed lawyers who are juggling many cases, and who often show up unprepared and late for hearings.”); Appellate Division First Department Committee on Representation of the Poor. (2001). *Crisis in the Legal Representation of the Poor*, available at http://www.courts.state.ny.us/press/old_keep/1ad-rep-poor.shtml (writing that “[a]s a result of shamefully low rates of compensation of assigned counsel, lack of resources, support and respect, inadequate funding of institutional providers, combined with ever-increasing caseloads, New York's poor are too often not being afforded the ‘meaningful and effective’ representation to which they are entitled.”).

17. *Michigan Court Improvement Reassessment*. (2005). Muskie School of Public Service & ABA Center on Children and the Law, available at http://muskie.usm.maine.edu/Publications/cf/MI_CourtImprovementProgramReassessment.pdf. The report further noted that parents reported that “their attorneys do not return phone calls or provide parents with their phone numbers, do not explain what is going on in their cases, do not give parents a chance to tell their side of the story at court hearings, and make deals without consulting them. Parents describe talking to their attorneys for only a few minutes before their hearings.”
18. The Annie E. Casey Foundation has played a pivotal role in spreading team decision-making across the country. See The Annie E. Casey Foundation. (2002). *Involving the Family and Community in Child Welfare Decisions*, available at <http://www.aecf.org/resources/team-decisionmaking-involving-the-family-and-community-in-child-welfare-dec/>, for more information about this work.
19. More information about the Center for Family Representation is available at <http://www.cfrny.org>.
20. See Center for Family Representation. *Our Results*, available at <http://www.cfrny.org/about-us/our-results/>.
21. Center for Family Representation. *Our Results*.
22. Thornton, E. & Gwinn, B. (2012). High-quality legal representation for parents in child welfare cases results in improved outcomes for families and potential cost savings. *Family Law Quarterly*, 46(1), 139–154.
23. Thornton & Gwinn (2012).
24. Thornton & Gwinn (2012).
25. Center for Family Representation. *Our Results*.
26. More information about the Parent Representation Program at OPD can be found at <http://www.opd.wa.gov/index.php/program/parents-representation>.
27. Thornton & Gwinn (2012). p. 147.
28. Thornton & Gwinn (2012). p. 147.
29. Thornton & Gwinn (2012). p. 147.
30. Thornton & Gwinn (2012). p. 148.
31. In Part I of this Series, the article detailed outcomes of several multidisciplinary efforts, including the Detroit Center for Family Advocacy, which provides multidisciplinary parent representation prior to the filing of a petition. Not one of the 112 children served by the Center during its three year prevention pilot period entered foster care. For more information about this prevention model, see Sankaran, V. S. & Raimon, M. L. (2014). *Case Closed: Addressing Unmet Legal Needs & Stabilizing Families*. Center for the Study of Social Policy, available at <http://www.cssp.org/reform/child-welfare/Preventive-Legal-Representation.pdf>.

Center for the Study of Social Policy

1575 Eye Street, NW
Suite 500
Washington, DC 20005

50 Broadway
Suite 1504
New York, NY 10004

1000 North Alameda Street
Suite 102
Los Angeles, CA 90012

202.371.1565 | info@cssp.org | www.cssp.org
