



2021 LEGISLATIVE AGENDA

Lessons Learned from 2020: Reaching New Heights for Children and Families



HOT TOPIC

Racial Equity in Child Welfare: Address the Roadblocks

ACTION

- Reform the Multi-Ethnic Placement Act (MEPA).
- Add in greater flexibility to Title IV-E Kinship care eligibility.
- Restore background check provisions that were narrowed in 2006.

The year 2020 shone a bright light on racial inequity. The COVID-19 pandemic, the events surrounding the death of George Floyd, and the ensuing debates over both have focused greater attention on racial inequality across this country. This inequity extends to child welfare.

Disproportionality in child welfare refers to the over- or underrepresentation of a particular ethnic or racial group compared with their respective percentage in the general population. An early 1980 HHS National Incidence Study showed that all children, regardless of race or ethnicity, are equally likely or unlikely to be abused or neglected. Despite this, data and statistics have demonstrated that minorities, especially African American children, have been overrepresented within the child welfare population at various stages.

At the end of the last century, as the Adoption and Safe Families Act (PL105-89) took effect, the number of children in foster care reached an all-time high of 564,000 children. Of this total, 38 percent of the children in foster care were Black, 34 percent were White, and 17 percent were Hispanic. Not only was that an overrepresentation of the Black population in foster care, but the actual number of Black children and youth, at 214,000, exceeded the number of White children in care, at 191,000.

The percentage of Black children in foster care had decreased to 30 percent by 2009 and to 23 percent by

2019. This represented a significant decrease but still is a disproportionate percentage of Black children when you consider that 14 percent of the child population is Black. Some states have a much higher, disproportionate share that is greater than these numbers. For the Hispanic population, national AFCARS data indicate that 20 percent of the child population was Hispanic in 2009 compared to 21 percent in 2019. That compares to a Hispanic child population of 25 percent in 2019, but in some states, this is not the case. Similarly, the national data on Native American children is limited, but some jurisdictions have a significant, overrepresented Native American population.

The rising foster care numbers of the 1980s and 1990s were driven in large measure by the AIDS epidemic and the prevalence of crack cocaine. One survey of urban centers in 1989 found that 30 to 50 percent of infants entering foster care had been exposed to drugs. By comparison, during the recent opioid epidemic, over a five-year period the national infant population (under age one) increased by 22 percent between 2012 and 2017 and by seven percent between 2012 and 2013. The child welfare system's response to public health crises has historically impacted communities of color disproportionately. The COVID-19 pandemic should be a test of a paradigm shift of the status quo.

MEPA and IEPA

Against a backdrop in the 1990s of rising caseloads, the promotion of adoptions became a charged issue due to the overrepresentation of Black children waiting to be adopted and how families are recruited in the adoption process. In 1994, the Multi-Ethnic Placement Act (PL 103-382), referred to as MEPA, sought to reduce the number of children in underrepresented groups who enter and remain in foster care by prohibiting federally funded foster care and adoption agencies from delaying or denying placement decisions "solely" on the basis of race, color, or national origin for adoptive or foster parents and children. Another provision required diligently recruiting racially or ethnically

diverse foster and adoptive parents. As enacted in 1994, MEPA did allow agencies, at least in legislative language, to consider the child's cultural, ethnic, or racial background, and the capacity of the prospective parents to meet the child's needs, as some of the factors used to determine the child's best interest.

In 1996, Congress changed the law by removing the word "solely" so that it now read "denying a placement on the basis of race, color, nationality." This is the Interethnic Placement Act, or IEPA, which specified a penalty for violations equal to 2 percent of Federal Title IV-E funds for a first violation, 3 percent for a second violation, and 5 percent for three or more violations. Private agencies can be required to pay back any Federal funds received.

In 2003, HHS issued its first fines against Hamilton County, Ohio, totaling \$1.8 million, based on 16 transracial adoption cases. Accompanying these fines was an information memo by HHS to all state child welfare agencies that highlighted this action and the need to adhere to the 1996 law. The memo (ACYF-CB-IM-03-01) stated, *"This Information Memorandum reiterates...long standing and unequivocal support for the letter of, and spirit underlying, the Multiethnic Placement Act, as amended..."* Within the adoption community, critics of the law and 2003 guidance felt it had a chilling effect on agencies that were recruiting, providing training, and providing culturally appropriate services for families seeking to adopt. There was and is not enough focus on diligent recruitment.

A 2009 GAO report stated, *"Policies that promote adoption of African American children were generally viewed as helpful...However, views of other requirements were mixed. Although 22 states reported that the federal policies requiring states to diligently recruit ethnically and racially diverse adoptive families would help reduce disproportionality, 9 states reported the federal requirements had no effect, and 15 states reported that they were unable to tell."*

In light of this past year's long-overdue focus on racial equity, should a federal law continue to restrict child welfare agencies from focusing any attention on the appropriate consideration of race and culture—not just in placement decisions but in providing instruction and training for prospective parents? Is that truly in the best interest of the child? Any evaluation of racial equity within child welfare policy must include a reevaluation of MEPA/IEPA.

Title IV-E Kinship Care

Kinship or relative care can be a critical tool in addressing disproportionality. African American and Hispanic children are more likely to be placed with relatives (32 percent and 48 percent, respectively), than are White children (27 percent). Past evidence such as reports to Congress by the GAO, testimony before Congress, and other research suggests that kinship care is an important practice in reducing disproportionality.

Congress enacted an important law in 2008. Before then, many, including the GAO, had urged Congress to extend the use of Title IV-E funds to kinship placements. Under the Fostering Connections to Success and Increasing Adoptions Act (PL 110-351), Title IV-E funds became available for kinship (guardian assistance placements, or KinGAP). Thirteen years after that law was passed as a state option, approximately 12 states still have not expanded services in this way through federal Title IV-E funding.

A July 2020, a GAO report found that even fewer states actually were using this Title IV-E option. In *Child Welfare and Aging Programs*, the GAO found that the Title IV-E subsidized guardianships option has been implemented by 33 states with an additional three states (Arkansas, North Carolina, and Oklahoma) having taken the option, but they were not serving families in 2019.

The 2008 law included a threshold that requires a child to be in the home of the prospective relative guardian for at least six consecutive months—in formal foster care and eligible for Title IV-E funding—before they transition to a subsidized guardianship. This requirement is in addition to protections written into the law, including ruling out a return home or adoption as not an appropriate option for the child; that the child has a strong attachment to the relative guardian; and that the relative caregiver has a strong commitment to caring permanently for the child. In addition, there is a requirement that a child 14 years of age or older is to be consulted on the placement. Relative subsidized guardianship is still linked (like foster care) to the 1996 AFDC eligibility standard.

The six-month requirement was included, in part, as cost-saving measure to enable the passage of the legislation. Thirteen years later, there are only 38,000 children in permanent subsidized guardianships. That compares

to more than 514,000 adoption assistance claims. In 2019, at least 13,000 children were in formal foster care with a plan to live with a relative, and 133,000 children in formal foster care were in relative foster care. We have reached a point where this six-month threshold is unnecessary.

This Title IV-E kinship care option is likely limited by an action that Congress took in 2006. The 1997 Adoption and Safe Families Act (ASFA) mandated background checks on all perspective families, extended these background checks, and prohibited placements even to relative caregivers if they had been convicted of certain crimes. In enacting this requirement, Congress had the insight to provide states with the ability to individualize their own eligibility requirements in this area and craft standards that in no way compromised the principle that a child's safety is paramount. This allowed so-called "opt out" flexibility that permitted states to craft their own background check requirements for some limited categories of crimes.

When originally enacted, the ASFA provision required that the "opt out" be requested by the governor or state legislature to ensure that rigorously reviewed protections

for children are implemented. As of 2006, California, Colorado, Florida, Idaho, Massachusetts, Nebraska, New York, Ohio, and Oklahoma had taken this option. In 2006, this option was eliminated by Congress for no obvious reason. All states were conducting these checks, but this 2006 change required states to categorically deny a placement for specified crimes. This has meant that some relatives, no matter how long ago their violation occurred, are not eligible for a Title IV-E subsidized guardianship. Some states have utilized TANF child-only grants to support these appropriate relative caregiver placements despite TANF's more limited support, both financially and case-work-wise. It is time to revisit this 2006 change that limited what had been agreed to under ASFA.

Conclusion

We recommend that Congress take these actions regarding MEPA, kinship care flexibility, and background checks as significant first steps to address some of the past policies that were enacted without regard to how they would eventually impact racial equity.



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