SCHOOL STABILITY IN CHILD WELFARE

KRISTIN W. MELTON, ESQ.
ROCKY MOUNTAIN CHILDREN'S LAW CENTER

BARRIERS TO EDUCATIONAL SUCCESS

- Trauma
- Mobility

TRAUMA

- Trauma, especially in early childhood, alters brain functioning in a way that negatively impacts learning
- Always in fight/flight/freeze
- “Trying to play chess in a hurricane”

SPECIAL EDUCATION

- IDEA-eligible students are entitled to a **Free Appropriate Public Education** in the **Least Restrictive Environment**
- Procedural safeguards protect students in many situations, including changes in placement and disciplinary removals
- Complex area of law – reach out for litigation support when needed.

MOBILITY

- Students in out of home placement are by far the most mobile – and least academically successful – special population in Colorado
  - 42.8% of OOH students changed schools outside the normal progression in the 2012-13 school year.
  - In the same year, only 27.5% of Colorado's OOH students graduated on time

IMPROVING OUTCOMES

Trauma

- Positive relationships at school
- Special education when the student has a disability.
  - Emotional disabilities can qualify a student for special education

Mobility

- Stay in the same school when in best interests
- When a move is necessary, should be immediate and have records transferred

FOSTERING CONNECTIONS

- "Ensures" educational stability for children in out-of-home placements
  - 42 U.S.C. § 675(1)(G)
  - Stay in same school if in best interests
  - If moving schools in best interests, immediate and appropriate enrollment in a new school

- Implementation is still a problem

FC IMPLEMENTATION IN VOLUME 7

- Requires CWs to:
  - Describe how new placement is in reasonable proximity to child's school;
  - Coordinate with school districts;
  - Either 1) notify sending school of records transfer request as soon as possible; or 2) request the records themselves and provide to the new school;
  - Document efforts to maintain child in same school; and
  - Document reasons why remaining in same school not in child's best interests.

MCKINNEY-VENTO HOMELESS ASSISTANCE ACT

42 U.S.C. §11431 ET. SEQ.

- Children who are homeless stay in "school of origin" if in best interest.
- If not in best interests to stay in same school, right to immediate enrollment in new school, even without all records.
  - Colorado implementation: §22-33-103.5(5)

ALL COLORADO STUDENTS § 22-32-116

- Despite moving out of district, students can remain in their school until the end of the term/semester.
  - Statute implies the district might have to provide transportation in some situations.
  - Seniors and elementary students can stay until the end of the academic year.

OUT-OF-HOME COLORADO STUDENTS §22-32-138 HB 08-1019

- Addresses prompt enrollment and records transfer for out-of-home youth who are changing schools
- Establishes fee waiver

FEE WAIVERS

- Schools and districts must waive fees for students in out-of-home placements.
  - C.R.S. §22-32-138(7)
- This includes, but is not limited to:
  - Extracurricular activities and programs before, during, and after school
  - Books and lab fees
  - Tuition for full-day kindergarten *

Thank you!

Kristin Melton
Rocky Mountain Children's Law Center
kmelton@childlawcenter.org

WORKING WITH IMMIGRANT CHILDREN & FAMILIES:

OBSTACLES AND OPPORTUNITIES ON THE PATH TO LAWFUL STATUS IN THE UNITED STATES

Presented by Abbie Johnson
Rocky Mountain Immigrant Advocacy Network (RMIAN)

OCR Core Competency Training – July 17, 2015

ROCKY MOUNTAIN IMMIGRANT ADVOCACY NETWORK (RMIAN)

DETENTION PROGRAM

SOCIAL SERVICE PROJECT

CHILDREN'S PROGRAM

RMIAN offers immigration-related legal services to non-citizen children and youth in Colorado who have suffered persecution, abuse, abandonment, neglect, family violence, forced labor, or violent crime.

HUMAN TRAFFICKING PROJECT

RMIAN evaluates cases of possible survivors of human trafficking through the Detention and Children's Programs.

ADVOCACY

WARNING ABOUT LEGAL ADVICE

- Immigration law is very complicated and it changes frequently. Nothing can substitute for consulting individually with an experienced immigration attorney about an individual case.

- Beware of "notarios" and the 1-800 Immigration help line. These are NOT attorneys and following their advice may cause major problems to a person's case!

- Colorado members of the American Immigration Lawyers Association (AILA) are listed at www.ailalawyer.com

IMMIGRATION 101: TYPES OF STATUS

- U.S. Citizens – by birth, naturalization, or derived from parents
- Lawful Permanent Resident ("green card" holders)
- Immigrant Visas (family-based petitions for residency) v. Non-Immigrant Visas (tourist, student, temporary work)
- Asylees & Refugees – suffered or fear persecution
- Undocumented Immigrants
  - Entry Without Inspection (EWI)
  - Visa overstays/violations

* Being present in the U.S. without immigration documentation is a CIVIL violation, not a crime!

IMMIGRATION 101: DEFINITIONS OF "CHILD"

- Under 21 & unmarried for family-based immigration categories
- Unaccompanied Alien Child (UAC), 6 U.S.C. § 279(g)(2)
  - has no lawful immigration status in the United States:
  - has not attained 18 years of age
  - with respect to whom-
    - there is no parent or legal guardian in the United States: or
    - no parent or legal guardian in the United States is available to provide care
  - *not status, but a designation with certain advantages, i.e., asylum filings, VD at government expense, potentially SIJS-eligible; and certain disadvantages, i.e., will be detained if encountered at border or interior
- Unaccompanied Refugee Minor (URM)
  - Federal foster (Office for Refugee Resettlement) care for UACs who are granted asylum, SIJS, are eligible for a T Visa, suffer refugee family breakdown, or entered alone as refugees.
  - Applications to State Refugee Coordinator (no guarantee "home state" will provide placement)
  - Colorado: LFS URM Program for 5+ years
  - *not status, but a designation that makes child eligible for federal foster care placement and public benefits

- Federal custody determinations (ORR v. DHS) depends on age

AND KIDS WITHOUT STATUS ARE REALLY DEPORTED?!

- Children largely treated procedurally and substantively the same as adults under immigration law
- No right to counsel at government expense
- Kids identified for removal proceedings through CBP/ICE apprehensions, local LEA contact, family breakdown, CIS application denials, etc.
- In Colorado: youth released to ORR "Sponsors," paroling from DYC, or riding on a parent's removal case are most common scenarios seen in immigration court.

COLORADO CHILDREN'S CODE

- State authority to implement and administer child protective services originates in traditionally recognized state role of *parens patriae* with regard to children who are not adequately cared for by their guardians.
- Colorado's Children's Code neither creates nor recognizes distinctions based on alienage or immigration status and mandates provision of appropriate services to any child found in Colorado.

AVENUES TO LAWFUL IMMIGRATION STATUS

- Citizenship
- Family-Based Petitions
- VAWA
- U Visa
- T Visa
- Asylum

SOME COMMON PATHS

SPECIAL IMMIGRANT JUVENILE STATUS

- An avenue for certain abused, abandoned, or neglected undocumented children in the juvenile court system to become lawful permanent residents.

- Requires a juvenile or State court to make several special findings of fact; also known as an "SIJS Order." This Order is a prerequisite to petitioning USCIS for SIJ Status. 8 CFR Section 204.11(d)(2).
  - Intersection of Federal & State law (in a good way).

- "Juvenile court" = "a court located in the U.S. having jurisdiction under State law to make judicial decisions about the care and custody of juveniles." 8 CFR Section 204.11(a). In Colorado, can be D&N proceeding, delinquency, APR, guardianship via probate, adoption.

CORE REQUIREMENTS OF SIJS ORDER

- Juvenile is under 21 years of age & unmarried
- Juvenile Court "dependent" *or* Juvenile Court "has legally committed [minor] to, or placed [minor] under the custody of, an agency or department of a State, *or* an individual or entity appointed by a State or juvenile court"
- Reunification with "one or both parents" is not viable "due to abuse, neglect, abandonment or a similar basis found under State law"
- Not in child's best interest to return to country of origin
- Court will maintain jurisdiction until status is granted unless state law requires closure due to "aging out"

DACA

- Not "status," but permission to stay
  - Not a pathway to LPR or citizenship
- 3-years of Employment Authorization, can renew

<u>Who qualifies?</u>

1) Arrival in U.S. before turning 16 years old
2) Continuous residence from 6/15/2007 to Present
3) Physically present 6/15/12
4) In school, graduated from high school, or obtained GED (or in process of obtaining GED
5) At least 15 at time of applying (unless in deportation proceedings)
6) No serious criminal convictions or gang activity

THANK YOU!

Rocky Mountain Immigrant Advocacy Network (RMIAN)
3489 W. 72nd Ave., Suite 211
Westminster, CO 80030

Abbie Johnson
ajohnson@rmian.org
(303)433-2812, ext. 9104

UNIQUE CONSIDERATIONS FOR JD/CROSSOVER CASES

ALISON BETTENBERG
MANAGING PARTNER, BETTENBERG, SHARSHEL & MAGUIRE, LLC

JD/CROSSOVER CASE ISSUES

- Be able to advocate in both courts for consistent orders
  - Bond versus Temporary custody
  - Know if your Court practices 1 child 1 court
- If your D&N child picks up a JD case, DO NOT discuss facts with them, do not become a witness
- Do not consent to interviews or allow them to make statements, invoke their right to counsel
- Be aware of sentencing options and what those entail
  - Probation
  - Placement
  - DYC
  - Mandatory Sentences
- Ensure they are making voluntary pleas
- Ensure disclosure of therapeutic information in JD cases is happening appropriately