Frequently Asked Questions:

Working with Undocumented Youth as a *Guardian ad Litem*

Are Dependent/Neglected Undocumented Youth Eligible for Services and Benefits?

YES--an undocumented child in Colorado has the same right to protection from abuse or neglect as does a US citizen child. Once a child is removed from his or her home through a D&N proceeding, immigration status should not affect that child's ability to access services and placement. Neither the Children's Code nor Volume 7 bases the provision of child welfare services or procedures on a child's immigration status, although immigration status may affect the source of the funding for services and placement, and may affect whether they are eligible for certain benefits, such as medicaid. Eligibility for various federal benefit programs is limited and depends on a variety of factors, including length of residency, type of status, and the benefit sought. The National Immigrant Law Center maintains excellent updated charts regarding program eligibility. *See* https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/.

Can Undocumented Youth be Attend Public School?

YES—according to a 1982 Supreme Court decision *Plyler v. Doe*, 457 U.S. 202, all children are eligible for and must attend school regardless of their immigration status. Certain undocumented youth are also eligible for in-state tuition at Colorado colleges and universities. *See* ASSET FAQ at http://highered.colorado.gov/Finance/Asset/ASSETFAQ_05232013.pdf

Are Undocumented Children Really Deported?

YES—Undocumented youth are placed into removal (deportation) proceedings regularly. They have no right to court-appointed counsel and must either hire an attorney to defend them against deportation, or represent themselves against an attorney from Immigration and Customs Enforcement (ICE). Youth with delinquency histories, alleged gang affiliations, or prior orders of removal are at particular risk for being detained and deported by ICE. Anyone charged in delinquency or criminal proceedings should consult with an immigration attorney before accepting any plea or sentence.

Who Should you Contact if Working with an Undocumented or Immigrant Child?

The Rocky Mountain Immigrant Advocacy Network (RMIAN) Children's Program provides technical and litigation assistance to *Guardians ad Litem* through a contract with the Office of the Child's Representative. RMIAN can help screen youth for potential pathways to lawful status in the US and assist with questions regarding their options.

Please reach out to Managing Attorney Ashley Harrington for assistance at:
AHarrington@rmian.org; (720) 370-9104

For more detailed information, please consult the Immigration Fact Sheet in the GRID.

What are the Most Common Ways for Youth to Obtain Legal Status in the U.S.?

1. Special Immigrant Juvenile Status (SIJS):

SIJS is a path to lawful permanent residency for unmarried children under 21 under the jurisdiction of a State court who cannot be reunified with one or both parents due to abuse, abandonment, neglect, or a similar basis under State law. Children must first get an order from a State court establishing their eligibility before they can apply for Special Immigrant Juvenile Status and lawful permanent residency (a greencard) with immigration authorities. In Colorado it is possible to obtain the required order in Dependency and Neglect, Delinquency, Allocation of Parental Responsibilities, Guardianship, and Adoption proceedings. *Guardians ad Litem* routinely seek and obtain these orders for youth in Colorado State courts with the assistance of RMIAN's Children's Program. Note that only the child can be granted status through SIJS and they can never apply for a parent, even a non-offending parent.

2. U Visa:

A U visa provides a pathway to lawful permanent residency for victims of certain serious crimes in the United States such as domestic violence and sexual assault who have been helpful in the investigation or prosecution of that crime. Victims must first obtain a certification from law enforcement attesting to their victimization and helpfulness before they can apply for a U visa with immigration authorities. Note that victims can also apply for close family members to be included on their application.

3. T Visa

A T visa provides a pathway to permanent residency for victims of sex and labor trafficking. Many foreign national youth have been victims of trafficking such as forced participation in prostitution and drug trafficking. The T visa allows victims of trafficking to qualify for many public benefits, to include close family members in the US and abroad on their application, and to apply for lawful permanent residency .

4. Asylum

Asylum is available to those that have suffered or fear they would suffer persecution in their home country. The persecution suffered or feared must be on account of the persons race, nationality, religion, political opinion, or membership in a particular social group. In general, people must apply for asylum within one year of entering the United States, although there are certain exceptions, especially for unaccompanied children under 18.

5. Violence Against Women Act (VAWA)

VAWA allows spouses, children, and parents of abusive U.S. citizens or legal permanent residents to apply for permanent residency without the participation of their abuser. To be eligible for VAWA, applicants must show immigration authorities that they were subjected to battery or extreme cruelty by their US citizen or legal permanent resident spouse, parent, or child. If able to demonstrate *prima facie* eligibility, applicants are eligible for many public benefits and for permanent residency.

6. Deferred Action for Childhood Arrivals (DACA)

DACA is a way for undocumented youth who have lived in the US since before June 15, 2007 and before they turned 16, who have attended school in the US, to obtain a work permit, social security number, and driver's license. It does not provide a pathway to lawful status. DACA is the result of Executive Action and could potentially be revoked by the President at any time. The future of this program is very much unknown as of July 2017. Children should consult with an immigration attorney before applying, especially those with any delinquency or criminal history.

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