

PROCEDURAL INJUSTICES IN CHILD WELFARE

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INTRODUCTION

Child welfare agencies assess families for child abuse and neglect. They also coordinate and provide prevention and intervention services. In cases where the courts are involved, child welfare agencies make recommendations to the courts about whether abuse or neglect has occurred, where a child should live, and what services children and parents should receive to improve family functioning. In addition, in cases where children have been removed from the home and parents are not able to reunify, child welfare agencies make recommendations regarding a permanent plan for the child.

Path of a Child Welfare Case

In most child welfare jurisdictions, services are provided to families through an array of service units that vary in their involvement based on the trajectory of the case. During the investigatory phase, a family is referred to a child welfare worker from the Emergency Response or investigatory unit who assesses the allegations of child abuse or neglect and whether or not children are safe in their home. During the initial phase, the social worker is also responsible

for stabilizing the child and family, setting up visits, and initiating the process of arranging services for families. Following the investigatory phase, a family is generally assigned to a different unit and a different social worker who carries the case during the adjudication and disposition hearings. Although this social worker continues to be responsible for providing referrals and services, the social worker's role is also to make the case in court that the child's parents have abused or neglected the child and that the child should be placed in out-of-home care. Following the adjudication and disposition phase of the case, the family is assigned to another ongoing or continuing worker. This worker is primarily responsible for providing the supports and services necessary to make families safe and stable, and, if possible, to return children placed in out-of-home care to their biological parents. In addition, this worker is responsible for initiating the process of concurrent planning for the child by establishing the placements and legal procedures necessary to place the child in an adoptive home if the biological parents are unable to reunify. In cases where children do not reunify with their parents, the case generally goes to a permanency planning or adoption unit that provides long-term care services exclusively to the child.

This chapter describes a number of circumstances within the child welfare system that may lead parents to perceive the system as procedurally unjust. It begins with the concept of procedural justice and research literature on the relationship of justice to effective client services. Based on this introduction, a more detailed description of the path of a child welfare case is provided by featuring a number of policies and practices that are perceived to be unjust to families and which may undermine the cooperation and collaboration necessary for child welfare staff to work effectively with parents. The chapter concludes with a discussion of how an awareness of procedural injustices within the field of child welfare can help child welfare workers better advocate for their clients.

Street Level Bureaucracy

In his book, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*, Lipsky (2010) defines street-level bureaucrats as the teachers, social workers, police officers, and other civil servants who perform the specific tasks with which the government is charged. Lipsky argues that an essential component of the work carried out by a street-level bureaucrat is the ability to exercise discretion and serve clients according to their individual needs. Lipsky points out, however, that due to lack of time, information, and resources, many bureaucrats do not practice effective decision making. Rather, he found that bureaucrats often find ways to routinize their work and simplify the needs of their clients. Lipsky concludes that this simplification and “mass processing” of clients carries negative implications for the quality of services clients receive as bureaucrats develop lower expectations for themselves, their clients, and public policy (p. xii). Street-level bureaucrats often accept the maxim that they are doing the best that they can under the prevailing circumstances but that there is little that they can do to significantly change the lives of the clients that they serve.

Organizational and Procedural Justice

Lipsky’s findings relate directly to the concepts of organizational and procedural justice as workers

seek to actively and diligently strive toward fair processes and outcomes for their clients. Organizational justice refers to people’s perceptions about fairness within organizations (Greenberg, 1987). According to Greenberg (1987), there are at least two perspectives of organizational justice: (a) procedural justice, defined as the fairness of the processes used to make decisions, and (b) content justice, defined as the fairness of the resulting decisions. Given that the task of a child welfare worker is to assist parents with the dual processes of assessment and case plan completion, this analysis focuses on the application of procedural justice to the field of child welfare.

Thibaut and Walker (1975) developed a theory of procedural justice based on a series of investigations into mediation and dispute resolution where they compared reactions of people to simulated procedures that differed in terms of two types of control: control over the procedures used to make decisions (process control) and control over the outcomes (decision control). Their research consistently found that decisions, resulting from procedures where participants believed themselves to have process control, were considered fairer and were better accepted than identical decisions made when participants did not feel they had process control (Thibaut & Walker, 1978; Walker, Lind, & Thibaut, 1979). These findings were replicated by other researchers who examined various courtroom and dispute-resolution settings (Casper, Tyler, & Fisher, 1988; Houlden, 1980; Lind, Kurtz, Musante, Walker, & Thibaut, 1980; Lind & Tyler, 1988; Tyler, 1987).

The findings of Thibaut and Walker have also been applied to noncourt settings where attitudes of fairness are deemed to be important. For example, Tyler and his associates found that reactions to encounters with police officers (Sunshine & Tyler, 2003; Tyler, 1990; Tyler & Huo, 2002), politicians (Tyler & Caine, 1981; Tyler, Rasinski, & McGraw, 1985), and teachers (Tyler & Caine, 1981) were heavily influenced by perceptions about the fairness of authorities. In the field of child welfare, researchers have also found the perceptions of fairness to be important to child welfare clients (Ashford, 2006; Ashford & Faith, 2004; Ashford & Holschuh, 2006). In essence, when people are satisfied that procedures and decisions are made in a fair manner, they are more likely to be satisfied with the

decision. Research has also demonstrated that this theory holds even when decisions are unfavorable (LaTour, 1978; Lind et al., 1980; Tyler, 1990; Tyler & Huo, 2002).

The purpose of this analysis is to identify examples of how child welfare services have become routinized in ways that are unjust and thereby undermine many of the fairness assumptions deemed critical to clients. Although the original intent of services is to help children and families or to improve the efficiency of the child welfare system, this review identifies ways in which procedures have inadvertently resulted in unfair or unfavorable consequences for child welfare clients. Thus, instead of improving the child welfare system, these procedures have made the efforts of child welfare workers more difficult by discouraging clients and limiting the potential for cooperation. This analysis is also designed to help identify the unintended consequences of child welfare procedures and highlight bureaucratic impediments to effective service delivery. It is important to note that child welfare injustices do not arise out of negligence or blatant disregard for the rights of men, women, and children. Rather, they have evolved over time, despite good intentions, as a result of oversimplification and routinization that can result in injustices for the children and families served by child welfare staff.

INVESTIGATIONS

The involuntary involvement of parents with the child welfare system begins when an agency receives a report of suspected child neglect or abuse (sometimes called “child maltreatment”), that triggers an investigation. Child maltreatment is defined by the Child Abuse Prevention and Treatment Act (CAPTA, 1974) as an act or failure to act by a parent or caregiver that results in serious physical or emotional harm, sexual abuse or exploitation, or death. Reports of maltreatment, often received on hotlines, are referred to a local child welfare agency for investigation.

Depending on the allegations in the case, investigations are normally initiated within 24 hours, although response times vary from state to state (DePanfilis & Salus, 2003). During a typical

investigation, the child welfare worker speaks to the person who made the report, conducts an in-person interview with the child or children in question, interviews “collaterals” (other people who may have information on the case), and sometimes interviews the parents who are accused of perpetrating the abuse (U.S. Department of Health and Human Services [USDHHS], Child Welfare Information Gateway, 2010). At the conclusion of the investigation, the child welfare worker determines whether the case is substantiated, inconclusive, or unsubstantiated, although these terms vary by state (USDHHS, Child Welfare Information Gateway, 2010). Typically, a finding of *unsubstantiated* means there is insufficient evidence for the worker to conclude that a child was abused or neglected or that the situation does not meet the legal definition of child abuse or neglect. A finding of *substantiated* often means that the worker believes an incident of child abuse or neglect, as defined by state law, has occurred. A finding of *inconclusive* indicates that there was not enough information for the worker to determine whether abuse or neglect took place (USDHHS, Child Welfare Information Gateway, 2010).

As part of an investigation, a parent is likely to encounter requests by child welfare workers to enter his or her home, go to a child’s school, or interview the child alone. Many parents also receive demands that they grant permission for other interviews with family members or service providers (Moynihan, Forgey, & Harris, 2001). These requests and demands are often made of parents under the implied threat that the child may be removed from the parent’s care and that the information gained may be used to convince the court of the alleged abuse or neglect (Hardin, 1988). Despite the potential for self-incrimination, child welfare workers conducting investigations rarely present a search warrant or fully inform parents that they have a right to deny the requests (Dickson, 2009; Hardin, 1988). Instead, many parents are informed that a lack of participation and cooperation may be presented as evidence that parents are hiding something or that they are generally uncooperative. As such, the first set of impressions developed by parents of child welfare agencies often include perceptions of demanding child welfare workers who interfere and intrude into their personal lives without any demonstrated legal

right to do so. In this process, parents often feel confused, powerless, and overlooked, creating a sense of procedural injustice that can impede cooperation and collaboration (Diorio, 1992; Haight et al., 2002; Kapp & Propp, 2002).

The investigative processes used by child welfare workers do not necessarily reflect carelessness or indifference. Instead, many of the procedures are derived from ambiguous definitions and procedures that inform child welfare practice. Since workers fill in the gaps created by procedural ambiguity with actions that are expedient and seemingly most protective of children, this ambiguity can breed poor practices over time. Every state has laws that dictate the circumstances (definitions of child abuse and neglect) and procedures under which a child welfare agency may intervene in the life of a family. Unfortunately, the language used in such laws is often broad and considerably more vague than language used in other laws (Huxtable, 1994).

Studies have demonstrated that the vagueness of child welfare laws makes the work of child welfare workers more difficult. Research by Van de Luitgaarden (2009) has demonstrated that ambiguous, missing, or contradictory information can impair the judgment of even highly skilled workers. Furthermore, Drury-Hudson (1999) found that many child welfare workers operated with a lack of awareness (and often confusion) about organizational policies and procedures thereby shaping their practice according to the worker's experience and the agency culture. Unfortunately, the result of child welfare ambiguity is inconsistency and low reliability in decision making (Arad-Davidzon & Benbenishty, 2008; Lindsey, 1992; Rossi, Schuerman, & Budde, 1999; Ruscio, 1998; Schuerman, Rossi, & Budde, 1999). Research suggests that the decisions made by child welfare workers in evaluating families may be influenced more by their own views than by the facts of the case, raising serious concerns about the accuracy, fairness, and procedural justice of child welfare investigations.

The ambiguous nature of child welfare law is not the result of inattention or antiquated statutory language. To the contrary, child welfare laws and procedures are updated regularly to reflect current customs, court decisions, or promising practices. Why, then, are the procedures guiding child welfare practice so vague? Some authors have argued that

the vagueness of child welfare statutes is necessary to allow for worker and judicial flexibility to assess each individual case with sensitivity in relationship to local community standards (Katz, 1975). Other authors suggest that greater worker discretion is necessary to ensure that children are protected (Polansky, Chalmers, Buttenwieser, & Williams, 1981). They assert that due to the variety of child welfare abuses, narrow definitions within child welfare statutes could prohibit child welfare workers from protecting children in situations where it is necessary, especially considering the difficulties in children's testimony (Huxtable, 1994). It has also been argued that since child welfare law does not involve the same restrictions on liberty as criminal law, it is not as necessary to narrowly define the laws to prevent abuses (Sinden, 1999). However, the ambiguity in child welfare law can result in intrusive investigations into the lives of families without sufficient assurances of procedural fairness (Hutchison, 1987). Not only do workers conduct investigations that appear on their surface to violate typical search-and-seizure protections, but workers are also often not equipped with sufficient information to fully inform families about the process. Given the complexity of explaining their processes to parents, workers proceed in their investigations with a presumption of authority that can be difficult to adequately justify. While the intent of ambiguity in child welfare law is certainly aimed at protecting children and promoting an environment where workers and judicial officers may exercise as much flexibility as possible, the unintended consequences include alienating families, tarnishing the worker-family relationship with suspicion, and creating a sense of injustice. To improve the procedural fairness of child welfare investigations, procedures need to be explicitly stated, easily explained, and uniformly practiced.

ADJUDICATION AND DISPOSITION

Following an investigation resulting in substantiation, a child welfare worker appears in court to formally inform the judge and the family about the charges of abuse that are being filed and the whereabouts of a child removed from the family's care (USDHHS, Child Welfare Information

Gateway, n.d.). These court hearings (called the adjudication and disposition hearings) are necessary to protect the due process rights of the parents (Chill, 2004; Sinden, 1999). During this phase of a case, the child welfare agency must properly notify the parents about the child welfare proceedings and prove parental unfitness with clear and convincing evidence (USDHHS, Child Welfare Information Gateway, n.d.). In addition, the child welfare worker must offer recommendations for the placement of the child and prepare a service plan designed to enable the parents to reunify with the child (USDHHS, Child Welfare Information Gateway, n.d.).

Child welfare courts (often called family or dependency courts) differ in many ways from criminal and civil courts (Sinden, 1999). Since dependency cases are considered civil matters, not all states require that parents have access to appointed legal counsel (Outley, 2004). While most states appoint counsel in practice, some states only require that an attorney be provided in hearings related to the termination of parental rights (Abel & Rettig, 2006; Outley, 2004; Rhode, 2009; Sankaran, 2007). For clients with an appointed attorney, contact with counsel appears to be infrequent, with attorneys meeting their clients briefly, and often in the lobby or outside of the courthouse just before the hearing (Sankaran, 2007).

Child welfare courts also employ a more informal or relaxed atmosphere in their courtrooms. Believing an informal process to be better able to empower parents, engender trust, build rapport, and resolve issues through a process of cooperation, mediation, and shared goals, most child welfare courts employ a nonadversarial, informal process (Sinden, 1999). Supporters of an informal process claim that by removing the adversarial character from the courtroom, participants are more likely to be open and honest and less intimidated by the court setting (Sinden, 1999). Despite the beneficial intent, however, some authors argue that this type of informality does more harm to child welfare clients than good. In her article, "Why Won't Mom Cooperate? A Critique of Informality in Child Welfare Proceedings," Sinden (1999) argues that the current informal court procedures in child welfare cases interfere with two fundamental due process goals: first, to promote accurate decision making and, second, to provide the best opportunity for

parties to be heard. Specifically, Sinden argues that by removing many of the procedural components of a formal courtroom (such as evidentiary requirements, the exclusionary rule against illegally obtained evidence, rules regarding prejudicial information, standards for expert testimony, and a process of cross-examination), an informal courtroom increases the admission of biased and inaccurate information.

Sinden (1999) also argues that there is a substantial power disparity between the child welfare agency and the parent in child welfare proceedings. Because of this disparity, instead of offering up additional information honestly and eagerly, parents are often discouraged from expressing their true opinions or opposition or introducing new information that may help their case. Instead, parents are often compelled to cooperate in order to make their case go easier and to satisfy the authorities:

In child welfare cases, where the individual is pitted against the vast power and resources of the state, the power imbalance is particularly extreme. Parents frequently come to court unfamiliar with the system, unversed in the prevailing professional discourse, unaware of their legal rights, eager to prove themselves respectable, rational, reasonable, and cooperative, and eager to please the agency social worker, whom they (rather accurately) perceive as enormously powerful.... Even where coercion is not intentional on the part of the social worker, parents are often too quick to accede to the agency social worker's suggested resolution of their case, resulting in false agreements that do not accurately reflect either the result that would have been achieved in court or our society's chosen balance between intervention and family privacy. (p. 385)

Thus, although the original intent of the current courtroom environment was to empower, welcome, and support parents, the unfortunate result is a system of informal hearings, where the assessment of the child welfare agency is largely unchallenged (Sankaran, 2007; Sinden, 1999). Within such a context, it is easy to see how parents may feel that they are not being fairly treated and that the process by which their parenting is being evaluated is unjust and flawed. As many authors have noted, a different, and perhaps more adversarial, court may be necessary to ensure parents that their procedural rights are being protected.

OUT-OF-HOME PLACEMENT

After the court has determined that children should be placed in out-of-home care, the family becomes formally involved with the juvenile or dependency court system. The courts, having declared that the child is a ward or dependent of the court and asserting the government's *parens patriae* right to protect the child, charges the child welfare agency with the responsibilities of providing for the child's safety and welfare and placing the child in a safe home (Badeau & Gesiriech, 2003). As will be illustrated, however, maintaining the appropriate balance between the state's legitimate interest in protecting and caring for children, and the rights of family members to make decisions about the child become significantly more complicated once a child is placed in out-of-home care. Furthermore, placing a child outside parental custody can carry many additional consequences for families which may undermine perceptions of procedural justice.

Children With Mental Health and Behavioral Problems

According to the National Alliance on Mental Illness (NAMI, 2003), 20% of children and adolescents in the United States (approximately 7.5 million) suffer from a mental illness. Providing care for a child with mental illness can be very challenging for parents in the following ways: (a) feeling shunned by neighbors and friends because of their children's illnesses, (b) blamed for their children's conditions, (c) forced to change jobs or quit in order to take care of their children, (d) pushed to the emotional breaking point, (e) disturbed by severely stressed marriages, and/or (f) siblings negatively affected by a child's mental illness, putting further strain on the family (National Alliance for the Mentally Ill [NAMI], 1999).

In addition to the social and emotional toll, caring for a child with mental illness carries enormous financial costs. In many cases, the costs of care for mentally ill children force parents to relinquish their children to child welfare agencies. As reported by Goodman (2004), the average middle-class family has an income too high to receive Medicaid yet too low to be able to pay out-of-pocket for childhood

mental health services (Giliberti & Schulzinger, 2000). According to the NAMI study (1999), 66% of responding parents reported that their health insurance did not provide adequate coverage for their children's mental health disorders. Forty-nine percent reported that lack of coverage impeded needed services for their children. In addition, nearly half of the respondents indicated that managed care organizations limited or denied access to needed treatment for their children to the detriment of their child's health. Parents that may be able to afford treatment for their child still face limited options because many residential facilities serve only children who are in state custody (Giliberti & Schulzinger, 2000).

With nowhere else to go, many parents turn to the child welfare system to obtain services for their mentally ill children. Once there, many parents are surprised by what they are told. According to the NAMI survey (1999), 23% of respondents reported that they were instructed to relinquish custody of their children if they wanted to access needed services, and 20% reported that they ultimately did so in order to get care for their children. According to Inglish (2010), many state child welfare jurisdictions erroneously believe that they are ineligible for federal funding to assist with mental health care unless the child is a ward of the state. Thus, through no fault of their own, many parents become involved in the child welfare system simply to address the mental health needs of their children. Whether due to the costs of treatment for their child or the specific policies of residential facilities, parents feel compelled to place their children in foster care to treat a child's mental health needs.

During the 1970s, many child welfare agencies maintained a two-tiered foster care system (Barth, 2009). With one level designed for children without behavior problems who needed protection from maltreatment and a second tier created for children with behavioral and mental health problems, this system allowed for a unique approach to placing and treating mentally ill children (Fanshel as cited in Barth, 2009). In 1980, the Adoption Assistance and Child Welfare Act made federal funding of child welfare services contingent upon parental incapacity or abuse (Barth, 2009). Despite the act, many children continue to enter care because of emotional and behavioral problems (Barth, Wildfire,

& Green, 2006). Regardless of the fact that these cases come into child welfare due to child behavior or mental illness, many are defined or reclassified as cases of abandonment or caregiver incapacity in order to meet funding requirements (Barth et al., 2006; Ervin, 1999). In these cases, child welfare workers write court petitions that describe the inability of the parents to care for the child, or they present the facts of the case in a way that focuses on the inadequacies of the parents (Ervin, 1999). Following the child welfare petition, the court handles the case as one of parental abandonment or incapacity and emphasizes the parent's compliance with their case plan and cooperation with the child welfare agency (Goodman, 2004). Parents involved in this system may wonder why so much attention is focused on their efforts when the original reason for child welfare involvement was to care for the specific needs of their children. Furthermore, all parents involved in the child welfare system are constrained by the provisions of the Adoption and Safe Families Act (1997) that limits the length of time that services can be provided to a reunifying parent, meaning that if parents are unable to reunify with their children within the mandated guidelines,¹ they risk losing their children permanently (Ervin, 2007; USDHHS, Child Welfare Information Gateway, 2010).

In recent years, public policy and legal efforts have been made to keep families intact when a child has a serious mental disability, by providing services and supports to families to ensure that children can remain at home (Goodman, 2004; Inglish, 2010; Stefan, 2008). Despite these efforts, and the fact that the original intent of child welfare involvement was to provide services to children desperately needing care, the procedure for providing mental health care to children through the child welfare system commonly involves charging parents in court with being abusive, neglectful, or inadequate to meet their children's needs. Under these circumstances, parents not only lose decision-making control regarding their children, but also they are routinely ordered to comply with a case plan and threatened with the termination of services if they cannot reunify within

a specified period of time. The tragic result of these procedures is that instead of feeling supported by the child welfare system, many parents perceive the system as unfairly blaming them, as well as interfering in their family in ways that are neither helpful nor just. These types of initial engagements do not lead to cooperative or supportive relationships between child welfare workers and parents. Instead, it often creates a confrontational environment where parents feel as though they must defend themselves against procedural injustices. Significantly, these procedures also shift the focus of child welfare and court processes from the needs and status of the child to an assessment of parental fitness, further impeding the success of child welfare efforts.

The Interstate Compact on the Placement of Children (ICPC)

Another complication that can arise once a child is placed in out-of-home care involves the Interstate Compact for the Placement of Children (ICPC). ICPC guidelines were originally designed to facilitate interjurisdictional placement of children into foster care or adoptive homes (Secretariat to the Association of Administrators of the Interstate Compact on the Placement of Children [SAAICPC], 2002). Within the policy, each state and territory in the United States maintains its own foster care system for children in the state's custody. If a child welfare agency in one state wishes to place a child with a parent, relative, foster parent, or potential adoptive parent in another state, officials in the "sending state" must cooperate with officials in the "receiving state" to assess the appropriateness of the placement and to oversee the delivery of any needed services. Importantly, the ICPC also mandates that a receiving state maintains the right to approve or deny placement of a child in its jurisdiction. Created as a result of unfortunate practices where children were placed in different states and forgotten, with no protections for their safety, the ICPC process was designed to ensure that children are placed in safe homes, assessed by child welfare agency staff, and that their safety and well-being are safeguarded

¹ Under the act, state agencies are required to seek termination of the parent-child relationship when a child has been in foster care for 15 of the most recent 22 months (USDHHS, Child Welfare Information Gateway, 2010).

following the placement (Colyer, 2009; Freundlich, Heffernan, & Jacobs, 2004).

Despite the intentions of its design, the ICPC has long been criticized as a barrier to the timely placement of foster children into permanent homes (Colyer, 2009; Dalberth, Hardison, & Gibbs, 2006; Freundlich, 1997). The most common problems are lengthy delays due to coverage of education and medical expenses, conduction of criminal background checks, facilitating collaboration between states, and issues related to staffing and workload (American Public Human Services Association, 2002; Dalberth et al., 2006). For noncustodial biological parents residing in different states, the process is even more complicated. These situations often arise when a parent who was living apart from the child learns that the child has been placed in foster care due to allegations of abuse or neglect against the custodial parent (Sankaran, 2006). In the process of petitioning the court to place the child in his or her custody, the noncustodial parent is often told that a home-study must be conducted by the receiving state under an ICPC agreement prior to placement of the child in the noncustodial parent's home (Sankaran, 2006). In these cases, the ICPC agreement mandates that until out-of-state approval is received, the court is prohibited from placing the child with the parent or approving a visit of over 30 days (SAAICPC, 2002).

Sankaran (2006) argues that the application of the ICPC process to biological parents is unjust, particularly when it comes to determining whether or not to approve placement of children with noncustodial parents. According to Sankaran (2006), caseworkers in a receiving state may consider the following factors when assessing a family's home: caregiver's income, preferred form of discipline, the safety of the neighborhood, the proposed school for the child, sleeping arrangements, housekeeping standards, and school performance of other children in the home. While all of these factors are not mandated, they are suggested in ICPC policy guidelines and prove to be more demanding than considerations commonly applied to parents within their own jurisdiction. Sankaran argues that because the ICPC guidelines do not specifically address assessments of biological parents, a vast number of appropriate placements have been unfairly denied under ICPC arrangements.

Furthermore, since ICPC guidelines do not include a provision for judicial review of decisions made by child welfare workers and few states have an administrative review of decisions, parents may be unfairly denied placement of their children without any recourse (Sankaran, 2006).

While the original intent of the Interstate Compact was to improve the efficiency of interstate placements and monitor the safety of children once they were placed in a different jurisdiction, the result is a process that is procedurally unjust to parents and often detrimental to children. Parents involved in this process often feel as though they are being punished for the faults of the custodial parent and denied access to their child without adequate reason. In addition, many children remain in foster care placements in their original jurisdictions, while biological parents eagerly seek, and are denied, placement in other states.

Financial Aid and Housing

In many cases, when children are removed from the care and custody of their parents, bureaucratic procedures may result in the family losing financial and housing assistance provided by the state (Courtney, 1998; Eamon & Kopels, 2004). Under these circumstances, family reunification may be more difficult (or even impossible) since parents must contend not only with the original causes of maltreatment but also with new problems arising out of homelessness and lack of financial stability. According to Courtney (1998), under the Personal Responsibility and Work Opportunity Reconciliation Act (1996) legislation that mandates the terms and conditions of public assistance, families may be denied cash assistance if the child for whom the family is receiving support is absent from the home for 45 days. Despite this language, Courtney (1998) also points out that states have considerably more flexibility than usually assumed and that, if certain procedures are followed, states may actually provide assistance during an absence of up to 6 months. Although this additional assistance is generally predicated on the efforts of states to coordinate communications between child welfare agencies and the state's welfare program, California and other states have begun the process of integrating

the child welfare and welfare services to improve this collaborative process (Berns & Drake, 1999; Berrick, Frame, Langs, & Varchol, 2006; Ehrle, Scarcella, & Geen, 2004). In a similar fashion, proactive work on the side of the child welfare agency may also encourage state housing programs to grant extensions and exemptions to families who have lost temporary custody of their children, allowing them to stay in their homes during their reunification.

Research has documented the crucial connection between financial stability and housing for families involved in the child welfare system. Wells and Guo (2003) demonstrated that children placed in out-of-home care reunified more quickly when a family's welfare benefits were consistent during the child welfare case. In another study, Shook & Testa (1997) compared child welfare outcomes for parents who did not receive cash assistance with parents whose benefits continued; they found that parents who continued to receive cash assistance were less likely to have children placed in out-of-home care and were more likely to be reunified with their children more quickly than families who did not receive assistance.

Numerous housing studies have demonstrated that when families receive housing assistance, they are more likely to experience successful family reunification. For example, a recent study by Choi and Ryan (2007) demonstrated that mothers with substance abuse problems who received housing services were more likely to achieve family reunification than mothers who did not receive such services. For families involved in child welfare, housing stability is a key factor in family reunification (Hoffman & Rosenheck, 2001; Ryan & Schuerman, 2004). In addition, when families with housing needs receive housing assistance, the risk of subsequent maltreatment is also decreased (Ryan & Schuerman, 2004).

The involvement of child welfare workers and subsequent placement of children in foster care is meant to be a temporary and ameliorating intervention in the lives of families. Unfortunately, when child welfare agencies and workers are not alert and attentive, child welfare involvement can also have serious negative consequences for families who lose desperately needed financial assistance and housing due to out-of-home placement. Furthermore, parents

who lose financial and housing assistance when their children are placed in care may not understand the difference between child welfare and public welfare, and they may wonder why the agency is making it as difficult as possible for them to reunify with their children. In order to preserve financial and housing stability as a result of child welfare involvement, child welfare workers need to recognize and understand the procedural implications of their practice and to ensure that their clients are not unduly affected by their interventions.

FAMILY REUNIFICATION

In moving from out-of-home care to family reunification, most parents must participate in a case plan of services designed to mitigate the circumstances under which the child was removed. Under the Adoption Assistance and Child Welfare Act (1980), a written case plan must be on file for any child receiving federal foster care assistance. In most states, the child welfare agency must also include the parent or guardian in the case planning process unless compelling circumstances prevent participation of the parents (USDHHS, Child Welfare Information Gateway, 2008). Under Title IV-E of the Social Security Act, case plans must also describe the type of home or institution where the child is placed, provide a plan for ensuring that the child receives safe and proper care, and describe the ways that appropriate services will be provided to the parents, child, and foster parents (USDHHS, Child Welfare Information Gateway, 2008). In addition, many states require a specific arrangement of goals, objectives, and timelines to improve the safety and well-being of a family's home. Some states also require that the case plan include a schedule of visitation between children and their parents and siblings (USDHHS, Child Welfare Information Gateway, 2008).

The Adoption Assistance and Child Welfare Act (1980) requires that states review a child's case at least every 6 months after foster care placement in order to determine whether the placement continues to be necessary and appropriate, whether the case plan is being properly and adequately followed, and whether the family has made progress in mitigating

the problems that led to out-of-home placement (USDHHS, Child Welfare Information Gateway, n.d.). The review hearings also consider whether a family can be reunified and establishes a target date for the child's return home, adoption, or other permanent placement (USDHHS, Child Welfare Information Gateway, n.d.).

Case Planning

The development of the child welfare case plan is one of the most important processes in a family reunification case. During this process, the child welfare worker often consults with the family to determine the unique circumstances that led to abuse and neglect and the services and supports that the family will need to ensure that maltreatment does not recur. Parental involvement in case planning is essential in order to match services and supports with the specific needs of the family. It also demonstrates to the parents that the agency believes them to be capable of achieving the case plan goals (Hatton, Brooks, & Hafer, 2008). Research on parental case plan involvement finds that people who are asked to participate in decision making are more likely to follow through with the plans and decisions that are made (Maddux, 2002).

Despite these findings, engagement of parents in case planning is neglected by child welfare workers approximately 50% of the time (USDHHS, Children's Bureau, 2010). Based on state program improvement plans, common concerns among state child welfare agencies include inconsistent matching of services to needs, failure to involve parents and children in case planning, inadequate caseworker visits with children and parents, and failure to engage fathers (USDHHS, Children's Bureau, n.d.). As Berrick (2009) notes:

Parents' stories about the path to reunification suggest a lonely experience that speaks largely to issues of compliance and less to changes in real-life experiences. The large majority of parents are given case plans that include parent education, drug treatment, and sometimes therapy—services that may match some of their needs but may also be less directly related to their parenting experience. (p. 31)

With such lack of engagement, it is no surprise that parents fail to reunify with their children

approximately 50% of the time (USDHHS, Children's Bureau, 2010). Child maltreatment recurrence rates of 20% to 30% also suggest that many parents are unable to sustain lasting change (DePanfilis & Zuravin, 1999; Drake, Jonson-Reid, Way, & Chung, 2003; Fluke, Shusterman, Hollinshead, & Yuan, 2008; Marshall & English, 1999). If child welfare workers are to successfully promote reunification, meaningfully protect children from abuse and neglect, and ensure procedural fairness for parents, effective case planning processes are needed to address the unique needs of each family.

Providing Services and Feedback

In order to assist families in reunifying, child welfare agencies must make "reasonable efforts" to mitigate the circumstances that necessitated a child's placement in out-of-home care (Adoption Assistance and Child Welfare Act, 1980). This policy is based on the assumption that families can improve their caregiving and adequately protect children from abuse and neglect if provided with targeted and effective services. Despite this mandate, many child welfare agencies simply refer parents to a standard array of services without consulting the parents during the case planning process, and with little proof that the services are beneficial or helpful in addressing the problems faced by these families (Barth, 2008; Berrick, 2009; USDHHS, Children's Bureau, 2010).

Some advocates have argued that the standard services offered by child welfare agencies do not even come close to addressing the complex problems that bring children into the foster care system (Wells & Marcenko, 2011). Research demonstrates that parents with substance abuse problems are less likely to reunify (Brook & McDonald, 2007; Eamon, 2002; Green, Rockhill, & Furrer, 2007; Mapp & Steinberg, 2007; McDonald, Poertner, & Jennings, 2007), as are parents with low incomes (Courtney, 1994; Courtney & Wong, 1996; Eamon, 2002; Kortenkamp, Geen & Stagner, 2004; Wells & Guo, 2003), inadequate housing (Courtney, McMurtry & Zinn, 2004), or mental health problems (Courtney, 1994; Eamon & Kopels, 2004; Grella, Needell, Shi, & Hser, 2009; Potter & Klein-Rothschild, 2002; Rockhill, Green, & Furrer, 2007). By not addressing deep-seated and

entrenched causes such as addiction, poverty, and mental health problems, researchers argue that child welfare agencies underserve families and run the risk of setting them up for the recurrence of abuse and neglect (Wells & Marcenko, 2011).

Considering some of the difficult problems that parents must address in reunifying with their children, the promotion of procedural justice calls for workers to adequately monitor the case plan as well as track and reward the progress made by parents (Saint-Jacques, Drapeau, Lessard, & Beaudoin, 2006). The essential process of monitoring and tracking progress provides families with an ongoing source of motivation and assistance with making progress toward reunification. In addition, the case plan helps to document the areas of family life that need continued work and improvement, and it provides an opportunity, when necessary, to revise the reunification plan (Gambrill & Stein, 1985). Regular feedback on clear objectives and outcome indicators helps parents to see that the child welfare process is designed to reunify them with their children. It also encourages parents who are making progress to see areas that need additional support. This is essential to providing families with adequate service (Gambrill & Stein, 1985).

DISCUSSION AND CONCLUSIONS

This analysis provides a review of procedural injustices experienced by parents involved in the child welfare system. While it is not exhaustive (societal and system-based injustices are too numerous to mention), it identifies many procedural injustices that have arisen out of policies and procedures that were created with good intentions but have resulted in detrimental and unjust outcomes. By highlighting the unintended consequences of such policies, experienced and novice child welfare workers should be able to find ways to change, work around, and adapt policies to serve clients in ways that are fairer, more responsive, and just.

According to the National Association of Social Workers (NASW, 2009), social workers have an ethical responsibility to “challenge social injustice” by pursuing “social change, particularly with and on behalf of vulnerable and oppressed individuals

and groups of people” (*Code of Ethics*). Therefore, child welfare workers need to be active in changing or modifying policies and procedures that are unfair to child welfare clients, by challenging existing policies and documenting the detrimental outcomes that call for reform.

Since child welfare workers are perceived as authorities and their own actions carry serious implications for the people they serve, they do not need to wait until policy changes are made in order to improve the procedural justice perceptions of their clients. As research has documented, judgments about procedural justice are often influenced by the interpersonal communications that clients receive from decision makers (Lind & Tyler, 1988; Tyler, 1990; Tyler & Huo, 2002). These judgments include respectful treatment (Bies, 2001; Bies & Moag, 1986), fully explained decisions (Bies & Moag, 1986; Tyler & Bies, 1990), and the trust engendered by the transparency of the authority figures (Tyler & Huo, 2002). Thus, child welfare workers have an opportunity to conduct themselves in ways that create perceptions of fairness on a daily basis. Child welfare workers can give clients the sense that they are being treated fairly and honestly when they (a) take time to clearly explain legal and administrative decisions to clients, (b) speak honestly with parents about the authority and responsibility of their role, and (c) communicate clearly about the decisions clients can make as well as the consequences of those decisions. Proactive workers can also engage families in the case planning process, address underlying causes, and provide encouragement and concrete feedback about progress. Of equal importance, child welfare workers need to avoid the oversimplification and routinization that can impede their ability to address the unique circumstances faced by their clients by remembering that each family faces unique challenges that require tailored responses and services.

In summary, the role of a child welfare worker is to engage parents in a shared process that will improve the safety and well-being of children. Whether through reunification or adoption, the accomplishment of this goal requires the help and cooperation of the child’s parents. The key to this cooperation is ensuring fairness for parents involved in the child welfare process.

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