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LEARNING FROM LIVED EXPERTISE:

How Redefining Neglect Can Shift Outcomes for Children, Youth, and Families: Ten Potential Strategies Child Welfare Systems Can Use to Work Toward Equity

by **Louie Gasper**

Imagine a system where neglect is not confused or conflated with poverty, and considerations of equity, including racism and cultural humility, are thought about for every family throughout the investigation and substantiation process. Josh Gupta-Kagan of Columbia Law School, Jey Rajaraman with Public Knowledge, Family Integrity Justice Works, and I presented on this topic at NACC's Inaugural Race Equity Virtual Training Series. Discussed at this training and in Gupta-Kagan's article, "Confronting Indeterminacy and Bias in Child Protection Law",¹ are ten strategies that systems, as well as individuals, can use to approach their work with an equity lens and, hopefully, create more equitable outcomes for children, youth, and families.

1

Narrow and Revise Mandated Reporter Training. Efforts calling for statutory changes to narrow the scope of mandatory reporting are important so that less severe incidents do not trigger mandatory reporting (and investigation of child maltreatment). For example, things that may not need to be reported but may be due to bias, such as when a child or youth is seen wearing the same clothes over multiple days, resulting in a perception of a lack of a family's ability to care for their child. It is important to examine and understand the current reporting requirements under the law before making a report or referral. A major component of this starts with practice changes to train mandatory reporters to not use the hotline to get services for families and instead raise awareness of any "warmlines"/helplines, if applicable. Mandated reporter training can also include strategies such as bias checks, development of a diversity, equity, and inclusion module, and aligning updates for any jurisdictions looking to revise their legal statute definitions for neglect. Systems should also train people to become mandated supporters instead of mandated reporters and help them recognize when supportive action should be taken.

2

Revise Registry Systems. Registries can hurt parents' ability to take care of the very children the system is designed to help. Parents should only be placed on registries in certain, specified situations. For example, some states have tiers, so lifetime placements are limited to the most severe cases, and the least severe cases do not lead to placement. Considerations can include if there is the ability to appeal and/or expunge the record, and that non-registry cases still have lifetime consequences for the family. One way to avoid the harms associated with registry placement would be allowing parents to contest the placement on grounds of rehabilitation.

3

Establish Strengthened Reasonable Efforts to Prevent Removal. Anti-poverty supports, including but not limited to housing and childcare, should be included in reasonable efforts. Prevention and pre-petition programs should further their focus on eliminating "poverty reasons" that often result in child welfare system involvement and family separation. The system has more recently welcomed the idea of using funding to keep families together;

¹ Gupta-Kagan, J. *Confronting Indeterminacy and Bias in Child Protection Law*. 33 STAN. L. & POL'Y REV. 217 (2022).



ensuring families impacted by poverty have access to financial support can often make the difference between continued separation or keeping a family intact. One thought reflection activity that can be done is visualizing the lens of how a wealthier family may handle or be treated in a similar situation, as well as assessing what can be done systematically to ensure that income and wealth are not the only or main factors toward separation.

④

Narrow Neglect Definitions. Lawyers should utilize the poverty defense on a case level for jurisdictions that have it, while other jurisdictions may need to develop poverty defense language on a systemic level through legal statute change, as well as language in communications around neglect that distinctly separate it from poverty. Additionally, certain fact patterns and situations, such as marijuana use and allowing children to engage in “independent childhood activities”, are currently perceived within the system to be connected to neglect without observing the family from a strength-based perspective. Investigation and substantiation for neglect should ideally only occur if there is a high level of harm/risk of harm. Although there can be harms in the home, which should be adequately assessed for risk as well as areas for support, there are also substantial harms that occur from removal, and it is vital to consider all of these factors in the equation.

⑤

Respect Meaningful Placement Preferences. There are multiple child welfare efforts for family strengthening, such as FFPSA implementation and kinship placement programs, and systems should continually work to support these efforts. When possible and willing, parents should have custody. If this is not possible due to lack of ability to care for the child/youth or lack of willingness, the goal should be placement with kin, including efforts to support family finding, building familial relationship bonds, and offering support and benefits. If the system had vehemently supported and advocated for kinship care and offered financial assistance and support to meet certain housing standards, I would have likely been able to live with my grandma (as I ended up doing years later) instead of aging out of foster care. This may not be possible for all children and youth, but efforts for meaningful placement preferences should be an ongoing effort and not one time. If this is not possible, the system should always strive to place children and youth in foster homes over institutional placements.

⑥

Revisit Reunification Standards. To reunify, parents must improve the underlying safety issues. Reunification efforts should not judge families beyond that scope and require parents to take additional steps beyond addressing the underlying safety issues. “Stable employment” or “stable housing” serve as barriers to reunification that are not necessarily related to immediate safety. For example, when parents are trying to reunify with their children, they often have to prove themselves instead of the system supporting them and making it easier. I remember a teenager from a children’s shelter who had a mother that loved and cared for him, but due to the fact she was renting a room, he was not permitted to reunify at that moment. Families should be concretely supported in services with intentionality from the system and a mentality that if it wouldn’t justify a removal, it shouldn’t justify a continued separation.

⑦

Leverage Data and Research Around Disproportionality & Disparity. When observing and developing strategies around addressing race equity it is important to consider existing research on disproportionality and disparity. For example, the study, “Lifetime Prevalence of Investigating Child Maltreatment Among US Children,” found that approximately 53% of Black children and youth experience a CPS investigation by 18 years of age compared to approximately 37% of the general population of children and youth.² Jurisdictional data can help continue to

2 Kim, H. et al. *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*. *American Journal of Public Health* 107, no. 2 (2017): 274-280.



pinpoint areas of inequity. Often, Native American families face even higher rates of disproportionality, and disparities are experienced systemically, institutionally, and interpersonally for many racial/ethnic groups. Raising the issues of bias and racism in the courtroom and using data to show how those biases play into key decision-making points in the child welfare continuum will help one to become an anti-racist lawyer.

8

Ensure Lived Experience/Lived Expertise Informs Systems and Case-Level Change. Children, youth, parents, and families with lived experience can and should inform any of the aforementioned strategies, whether it is power sharing within case planning or programs such as parent partners, youth advisory boards, or other pathways to authentically weigh in on agency decisions (such as data and research analysis, recommending placement strategies, and involvement in program and policy revisions). Systems-level involvement of people with lived experience not only improves insight into practices and programs prior to implementation but also strengthens relationships and pathways for youth and families to contribute and heal when spaces are authentic. Consider, when possible, engaging people with lived experience who are diverse in backgrounds and perspectives and racially/culturally reflective of the communities that are served.

9

Consider Language Usage through an Equity Lens. The system often uses language and terminology that judge families instead of empowering them. First consider the language your system uses and embraces including system-specific terminology, DEI-related terminology, cross-systems terminology, and behavioral descriptors of children, youth, and families. Then consider the language you use when working with, for, or on behalf of families, and ensure that this language is informed, strengths-based, and promotes equity, inclusion, and belonging. There may also be an opportunity to build shared language on a systemic level, such as getting together a significant group of staff and stakeholders to develop and agree on certain definitions that can be further informed from an equity lens.

10

Assess Policy and Practice with a Reliable Racial Equity Assessment. A Racial Equity Impact Assessment (REIA) is a systematic examination and analysis of how different racial and ethnic groups will likely be affected by a proposed action or decision. REIAs are used to minimize unanticipated adverse consequences in a variety of contexts, including the analysis of proposed policies, institutional practices, programs, plans and budgetary decisions.³ These assessments are often designed to address racism at the institutional and systemic level, but assessment can also occur at the individual level to ask ourselves important questions around biases and the ways we show up. REIAs can be vital tools for preventing institutional racism and for identifying new options to remedy long-standing inequities. REIAs can be used to reduce, eliminate, and prevent racial discrimination and inequities.

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³ raceforward: THE CENTER FOR RACIAL JUSTICE INNOVATION. "Racial Equity Impact Assessment". Available at: https://www.raceforward.org/sites/default/files/RacialJusticeImpactAssessment_v5.pdf.