

International Placement of Children to Their Countries of Origin

MARIO NAVARRO-SUÑOL

EXECUTIVE SUMMARY

The purpose of this case study is to describe the protocol developed between Santa Clara County and the General Consulate of México in San Jose. Understanding the protocol is important for the San Francisco Human Services Agency, Family and Children Services because of the work the agency does with undocumented Latino families. My 15 day internship consisted of meetings with Santa Clara County staff and the Mexican and El Salvadorian Consulates in San Francisco. These meetings were essential to understand how to best serve Latino families. Santa Clara County was the focal point because they have developed and implemented a protocol to place

Mexican children with their relatives in México. Meetings with the Consulates of México and El Salvador initiated conversations for San Francisco County to develop a best practice protocol in San Francisco.

Establishing a protocol in San Francisco will ensure that Latino clients are informed of their rights as foreign nationals and that all the permanency options would be available to Latino families, regardless of where they reside. In general, a protocol will improve the quality of services to Latino families while keeping with the agency's mission statement, fiscal limitations, and the court's mandates.

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Introduction

The purpose of this case study is to better understand the protocol developed between Santa Clara County and the General Consulate of México in San Jose. It describes how Santa Clara County developed the protocol that allows its staff to place children of Mexican origin with their family or relatives in México.

An expected outcome of my 15 day internship was to be able to make recommendations to the City and County of San Francisco's Human Services Agency on how to more effectively address difficulties in working with Latino families. Santa Clara's process showed ways in which the agency can develop relationships with the Consulates in San Francisco and with additional community partners.

Background

The City and County of San Francisco, Human Services Agency, Family and Children Services (HSA-FCS) works with both Latino families who are living in the United States as lawful, documented immigrants, and with Latino families who are undocumented. Some undocumented families are characterized as recent immigrants, who have come to the United States leaving behind family members (e.g., children, spouses). Due to the circumstances of their departure, these families often arrive in the United States without any documentation from their country of origin.

According to the HSA-FCS February 2005, Quarterly Report, 11% of the children removed from their parents or legal guardians and placed in foster care were Latino children (http://www.sfgov.org/site/uploadedfiles/dhs/Frequently_Requested_Statistics/

Feb2005FCSQuarterlyReport.pdf). The characteristics of these children are varied. Some of these children are born in the United States and are therefore being United States citizens. Other children have been born on the way to the United States, (in any of the countries where the mother has traveled between the country of origin and the United States). These children are foreign-born citizens from the mother's country of origin, and nationals of yet another country, which then requires them to be registered with the birth country's Consulate in order to establish citizenship. Yet, other children who are born in the mother's country of origin, become undocumented like their mothers. Information on the number of undocumented families and children involved with HSA-FCS was not available because the agency does not track this type of demographic data.

According to the Census 2000 Summary File, the percentage of people who are Latino or Hispanic in San Francisco is 14%. Also, according to the U.S. Census 2000 Summary, 37% of the population in San Francisco is foreign-born. The number of non-citizen foreign-born in San Francisco has increased from 28,767—for the period from 1980 to 1989, to 78,646—for the period from 1990 to 2000 (U.S. Census 2000 Summary).

The Census information is consistent with the agency's trend toward increasing number of Latino families. Furthermore, it also suggests that many recent immigrants are likely to be maintaining relationships with family and extended family members who are still living in their countries of origin. Serving these families has presented unique challenges for the HSA-FCS.

One of the challenges has been meeting the State of California's mandates and regulations. For

example, the System Improvement Plan (SIP) has as a goal the permanent placement of all the foster care children. The current options of permanency available to foster care children are Relative and Non-Relative Adoption, Relative and Non-Relative Legal Guardianship, and Relative and Non-Relative Long-Term Foster Care. In San Francisco County, the preferred permanency options are those whereby the minors are placed with their relatives. In spite of the agency's best-practice position, these options are difficult to exercise with international families because their relatives live outside the United States. In general, social service agencies in California have not developed procedures allowing for the placement of children outside the United States.

An additional difficulty has been meeting the cultural needs of the children living in foster care. For example, the foster care homes available in San Francisco often do not match the culture of the children the families have in their care. According to the *Ethnicity Statistics of Children in Out of Home Care with Non-Relative Care Providers* for the annual period ending December 31, 2005, 222 out of 228 Latino children were placed with caretakers of a different ethnicity from their own. From a fiscal perspective, undocumented families and children have been financially challenging to the agency since the state does not reimburse the HSA-FCS for the services provided to undocumented children such as foster care costs and other services offered to the family.

Another challenge that the agency has experienced is verifying a family's identity. Families without any identification cannot easily obtain a consular registration for themselves and their children as citizens of their native countries. This becomes a particular problem for foreign-born children who need a birth certificate, as well as for adults who often do not have any form of identification for check cashing purposes and other needs.

These reasons, among others, has led me to explore a new way in which the HSA-FCS could improve the quality of services to Latino families through developing protocols and procedures on how to place children in foster care outside the coun-

try in keeping with the agency's mission statement, fiscal limitations, and the court mandates.

The Process

Santa Clara County became the focal point of the 15 day case study because they have developed and implemented a protocol to place Mexican children with their relatives in México. In meetings with B. Estela Carrillo, social worker and Jorge Gonzalez, Program Manager II, I learned about the protocol and how to best serve the Latino families. My meetings with staff at the Consulates of México and El Salvador resulted in further conversations for developing a best practice agreement between the San Francisco Human Services Agency, Family and Children Services and the Mexican and the Central American Consulates. Trainings offered by the Salvadorian General Consul to the agency can offer social workers an opportunity to learn about consular services. There have also been discussions about setting up trainings on how Mexican Social Services function through *Desarrollo Integral de la Familia* (El DIF).

Santa Clara County's Protocol, Procedures and Practices

Note: The following section is taken from the Santa Clara County's Protocol, Procedures, and Practices and will help provide a framework for understanding current policy in that county.

Purpose of the Protocol between Santa Clara County and the Mexican Consulate

Santa Clara County developed the Protocol to guide social workers to deliver best practices to Mexican families and to work with the Mexican Consulate on behalf of these families, ensuring that the rights of incarcerated Mexican Nationals were honored in accordance with the Vienna Convention of Consular Relations treaty. The protocol's purposes were: to ensure appropriate safe placement with the family and/or relatives in México, to improve the communication and relationships between the Social Services Agency/Department of Family and Children Services, General Consulate of México, the *Desarrollo Integral de la Familia* (El DIF) and to follow the Vienna Convention on Consular Relationships with México.

The protocol states that according to the Vienna Convention on Consular Relations the Mexican Consulate is required to perform diplomatic functions specifically related to detainees. Some of the functions include: protecting the interest of foreign nationals issuing passports and travel documents, safeguarding interest of mi-

nors, and/or representing or arranging for preservation of rights and interest of foreign nationals. (Article 2)”

As described in the protocol: “diplomatic acts that the Consulate may perform as a representative of foreign national in any inter-governmental organization (Article 17, Vienna Convention of Consular Relations), visit a foreign national who is in prison, custody, or detention (Article 36c, Vienna Convention of Consular Relations), and receive information and participate in deciding who is to be appointed as the guardian(s) or trustee(s) in the interest of minor(s) (Article 37b, Vienna Convention of Consular Relations).” (Santa Clara Protocol)

“The Convention also delineates some of the Mexican rights in particular detainees.” (Santa Clara Protocol) This would apply specifically when Mexican parents or minors are detained. These rights state that foreign nationals must be told of their rights to consular notification and access. The detaining official should determine whether consular notification is an option of the foreign nation or whether it is mandatory. In cases of mandatory notification, the notice must occur immediately. The detaining agency should keep records of notification. Consulate officers must be allowed to visit, converse, and correspond with the detained person. Consular officers must also be notified of the death or accident of a foreign national.

If a person has dual citizenship, he/she will be treated simply as a United States citizen. Court notification to the consulate is not mandatory, but it may be an option if it helps promote compliance. The Consular officers may speak to the detainee, assist in legal representation arrangements, check on the conditions of the facility, and notify the detainee’s family.

Notification Requirements

The protocol describes the notification requirements according to the Vienna Convention of Consular Relations.

Notice to the Family

When a child is placed in protective custody, their citizenship/resident status should be determined. If they or their parents are Mexican nationals, the family should be informed of their right to contact and include the Mexican Consulate’s Office of their case. This notification should occur immediately.

Protective Custody

When a child is placed in protective custody, their citizenship/resident status should be determined. If they or their parents are Mexican nationals, the parent should be informed of their rights to contact the Mexican Consulate. If the child is a Mexican national, the Social Worker should notify the Mexican Consulate of the date, time and location of the next hearing. This notification should occur by telephone, e-mail, preferable by fax, and documented in the case file.

Court Proceedings and Actions

The protocol specifies that the Mexican Consulate may come to court to request permission to attend the hearing. However, they are not a party to the action and may not receive documents from the case file without approval from the Court.

Family Conference/Team Decision Meeting (TDM)

Santa Clara County is a Family-to-Family County and they use Family Conferences and Team Decision Meetings in their practices. The protocol indicates that once the Office of the Mexican Consulate has become involved in the case they can participate in

Team Decision Meetings and family conferences at the request of the parents.

Confidentiality—Court Ordered

The protocol also addresses issues of confidentiality and court orders. However, the Welfare and Institution’s Code Section 827 allows the Agency to share court reports and other confidential information with the Consulate only pursuant to court authorization. The information that can be shared with the Office of the Mexican Consulate is the parents and children’s names, address, date of birth, telephone numbers, and a brief general overview of parent’s situation can be provided, for example the type of abuse.

Factors to Consider When Placing a Minor in México (non-adoption)

The protocol delineated the factors to be considered when placing minors in México in a non-adoptive status. First, the social worker has to ensure that the family is appropriate to care for the minor. The protocol states the following steps:

- a. Ask the parents to recommend relatives for possible placement.
- b. Have the relatives in México call the social worker if interested in offering a home to their minor relatives
- c. Assess over the telephone if relatives are willing to take the minor.
- d. Assess if the relatives are willing and able to have a permanent placement, legal guardianship, or adoption.
- e. Ask the relatives if they would permit a home study by El DIF
- f. Inform the relatives of the California Dependency Court procedures.
- g. Ask for the participation of the Mexican consulate to assist in placement options, such as finding relatives if the parents do not know where they live.
- h. Request the Mexican Consulate for a home study to be done by El DIF (See the procedure to request a home study in the Home study Section)
- i. Once the home study is completed, and received by the Mexican Consulate’s office, the social worker will be contacted.
- j. The social worker can now contact El DIF to discuss specific services needed by the family and/or minor.
- k. If requested, social worker can provide El DIF with translated court documents ordering services needed for clients.

The protocol also addresses how to locate services for children and/or the family in México, including services for special needs minors. The social worker needs to check with the Mexican Consulate to find or locate specific service providers to arrange needed services for the minor and/or family.

Other Notifications and Court Orders

The protocol addressed a few safety and migratory issues. It states that the social worker has to inform the agency, the Mexican Consulate’s office, and El DIF in México of the travel itinerary, the names and telephone number of contacts in México such as the family the worker is visiting and the El DIF contact social worker. Travel documents required are a passport and a FM3 visa given by the Mexican Consulate to enter México as a Social Worker.

It was also agreed that the Social Worker would send notifications to the family in the United States and in México of the objectives of the trip three weeks in advance. The worker must notify the Mexican Consulate Office, at least three days in advance, of the final travel itinerary.

The agreement reminds the U.S. worker that under the United States and Mexican laws, the court with jurisdiction of the case is the one where the minor resides. It is recommended to consult with the County Counsel and the Consulate General of México about this issue.

Home Studies

The agreement states that in order to request a home study from El DIF, the assigned U.S. worker should contact the office of the Mexican Consulate. The office of the Mexican Consulate will in turn contact El DIF in the area where the family resides and request for a home study. Once the request is made, the Mexican Consulate will provide the U.S. worker with the name and telephone number of the assigned El DIF social worker. The U.S. worker should request information needed for the home study and to inquire as to the time needed to complete the home study. El DIF social worker will forward the completed home study. The U.S. worker should be aware that El DIF social worker might not be able to complete the home study in time to meet Court deadlines. This should be noted and reported to the Court. If El DIF is unable to do the home study, a pre-visit placement is necessary. The pre-visit placement is done by the U.S. worker accompanied by an El DIF social worker.

The protocol stated that once the placement or the home study was approved by the Agency, the U.S. worker must notify the Office of the Mexican Consulate. The Mexican Consulate then will notify Secretaria de Relaciones Exteriores, El DIF, and the family who will receive the children.

Travel Documents for Minors

The agreement stated that minors would need an original birth certificate. If the children were born in the U.S. or in any country different from their parents, they will also need a certificate of child born abroad. The Mexican Consulate gives this certificate.

In Case of Failed Placement

As stated in the protocol, if a placement of a minor fails, the U.S. worker must immediately notify the office of the Mexican Consulate by telephone and in writing of the need to return the minor to the United States. The following documents are needed: an Ex Parte Court Orders translated to Spanish and certified by the Court. The Ex parte Court Orders have to be "apostillado" (certified) by the Secretary of State in San Francisco. The minor's original birth certificate is needed and, if possible, the passport is preferred. In México, a notarized letter from relative caregivers releasing the minor of their care is also needed. This letter must be presented to Mexican Immigration authorities at the airport, so that the minor can leave the country.

Returning Minors to the US

The protocol stated that in the event of having to return a minor to the United States, the U.S. worker must immediately notify the Mexican Consulate's office by telephone and in writing, informing them of the need to return the minor to the United States. The Office of the Mexican Consulate will then contact the Secretaria de Relaciones Exteriores (SRE) and El DIF. The U.S. worker must also notify parents, the District Attorney, relatives, and the parent's and children's lawyers. The protocol states that returning a minor from México to the United States requires authorization from Mexican Court.

The protocol also reminds the U.S. worker that if the minor placed in México is not a United States citizen or a permanent resident, the minor then will not be able to return to the United States. The minor's parents should be informed about these issues before placing the minor in México.

The Role of the U.S. Social Worker in México

The protocol stated that the U.S. worker would follow the regulations of the Secretaria de Relaciones Exteriores (SRE), Sistema Para El Desarrollo Integral de la Familia (El DIF) and all the laws of the host country (i.e., México). An U.S. worker cannot practice social work in the host country. An El DIF social worker or an official from *La Secretaria de Relaciones Exteriores* must accompany all official activities of the U.S. worker.

The protocol established that the El DIF social worker would accompany the U.S. worker to visit families. The El DIF will provide most of the resources needed by the client and the family. If requested, the El DIF, in most cases will provide reports about the family's progress.

The Role of the Mexican Consulate

According to the protocol, the Mexican Consulate will assist parents in the process once contacted by the family. The Consulate may participate in TDM's and Family Conferences if requested to do so by the family.

The Consulate may also assist in obtaining Mexican birth certificates for children born abroad, Matricula Consular (photo ID), FM3 (Mexican Visa), and dual citizenship status. They will also assist in obtaining the placement home study, locating specific service providers and special services in México to meet the needs of the family.

The Consulate will also contact the Secretaria de Relaciones Exteriores for protection of the traveling U.S. worker. The Consulate will assist the Agency to establish the nationality of the minor. In cases where the Mexican minor has been placed as a ward of the State of California and become eligible for special Immigrant Juvenile Status (SIJS), the consulate will assist the Agency in obtaining the necessary documentation from México for completion of the SIJS application.

The sections taken from the Santa Clara County's Protocol, Procedures and Practices end here.

Factors Contributing to the Success of the Protocol

The concept of placing California court dependent children with families outside of the United States was a very radical idea. It challenged geographical boundaries and required coordination of two different court and welfare systems. Achieving these types of placements through an agreement between Santa Clara county, the Mexican Consulate involving El DIF in México required a great amount of leadership, organization, and knowledge of child welfare, and international and immigration laws. Obtaining

support from the community and the Santa Clara County Juvenile Court also required a great deal of communication and involvement.

The vision of the Santa Clara County Latino workers, along with the support of their management, is the key element to the successful development of a best practices protocol in working with Mexican families. It took the County of Santa Clara more than four years to develop the model protocol. During that period, the Latino workers formed committees addressing immigration issues and service delivery for Latino families, in particular Mexican families. The workers and their organization, El Comité also formed partnerships with Latino groups including service providers in the county, the Mexican Consulate in San Jose and Latino students at the California State University School of Social Work. The committees and groups formed before the establishment of the protocol continue to exist as the Latino workers continue to drive the agency into the future exploring more creative alternative to serve the increasing needs of the Latino population in San Jose.

Santa Clara's strong internal and external organization and leadership enabled them to overcome the obstacles and resistances they encountered from some of their own workers, management, the court and the community. They concentrated their effort on educating those who resisted their ideas by highlighting the importance for the children to have family connections, strong cultural roots and language. This steadfast child-focused approach provided the success for changing the court's, agency's, and community's culture regarding their opposition to placing children internationally.

Implications for San Francisco

San Francisco County's diverse Latino population represents a challenge in the development of a best practice protocol between the county and the consulates. The diversity of population comes with a wealth of cultural, historical, political and sometimes even linguistic differences. The challenge for HSA-FCS is finding ways to serve a diverse group that is mandated by city ordinances and welfare laws.

One of the advantages of living in an international city is the ability to find Consular Offices of most of the Latin-American countries. Developing agreements of best practices between each of those consulates and the county is possible. However, it would require a clear vision, coordination, and time. One of the accomplishments made in San Francisco is the relationship with the Mexican, El Salvadorian and Nicaraguan Consulates. These relationships might facilitate the development of a best practice guide. These relationships also have allowed HSA-FCS to offer training on consular services offered by the Mexican and El Salvadorian Consulates.

The protocol established by Santa Clara County HSA paved the way for Latinos workers in San Francisco. Even though, the protocol has been successful in Santa Clara, some negative arguments from some of the San Francisco workers and supervisors might be raised, particularly concerning the increase in their work duties that placing children internationally might require of them.

Questions that HSA-FCS and the City Attorney's Office could raise would be about the liability incurred in international placements. The philosophical beliefs of some attorneys, commissioners and judges will challenge the ideas of international placements. Panel Attorneys would argue that the minors would be deprived of the opportunities that living in the United States might offer them. Latin-American countries are mistakenly perceived as unsafe for children and offering limited opportunities for success. In addition, there might be concerns about the lack of placement monitoring and having to share placement and decision-making authority with a foreign court and a different child welfare system.

An argument to overcome the above obstacles might focus on child welfare research which indicates that placements of children with their relatives, in a culturally and language appropriate setting, can strengthen the minor's resiliency and their ability to succeed in life. Legally, "when a child is placed in foster care by a county, the county social worker and court must give preferential consideration to certain relatives (grandparent, aunt, uncle or sibling)." In ad-

dition, Child Welfare Legislation states, “the court shall order the parent to disclose all known relatives. The social worker shall initially contact the relatives given preferential consideration to determine if they desire the child to be placed with them. Those desiring placement shall be assessed.” http://www.dss.cahwnet.gov/cfsweb/KinshipCar_343.htm

Establishing a protocol in San Francisco will ensure best practice among workers to ensure that Latino clients are informed of their rights as foreign nationals. They would also be able to understand the importance of being connected with their national consulates. Latino families would be offered consular services available for them to register their foreign-born children, and know how to apply for dual citizenship for their children, as required by international agreements.

Establishing a protocol would also improve HSA-FCS’s ability to achieve permanency for all the Latino children in foster care. All the permanency options would be available to the Latino families, regardless of family status or residence. Further, the numbers of Latino children placed in out of home care with non-relatives and/or with non-ethnically matched families will decrease, making the lack of Latino foster care homes available in San Francisco less of a problem for the Latino families.

In general, a protocol of best practice will improve the quality of services to Latino families keeping with HSA-FCS’s mission statement, fiscal limitations, and the court’s mandates.

Conclusions and Recommendations

I propose that the City and County of San Francisco Human Services Agency implement standardized procedures within the Family and Children’s Services Division which will allow families to identify the placements of their children with relatives in their county or origin, either in relative foster-care, relative legal guardianship or relative adoption status. The proposed procedure would use the Santa Clara County protocol as a model and would describe how individuals could register themselves and their children as citizens of their native countries,

and how to obtain proof of birth, marriage, and any other important identifying documents. Having such a system in place, I suggest, will assist HSA-FCS in better serving our growing international families, maintaining the agency’s goals of keeping families together, respecting extended family relationships, and encouraging self-determination and sufficiency.

Acknowledgements

I would like to acknowledge Social Services Program Manager II, Jorge Gonzalez, for his overview of the *Best Practice for Mexican Children: Protocol for Cases Involving Mexican Families and Children*, and the BASSC Directors and staff for the opportunity to participate and learn from this project. Sincere appreciation also goes to B. Estela Carrillo, Social Worker I, for her time and invaluable guidance and assistance on this project. Her enthusiasm and belief in the importance of placing children with relatives are contagious.

I also would like to acknowledge San Francisco Program Manager, Sophia Isom, Section Manager, Susan Arding, and BASSC Coordinator, John Murray, for the opportunity to participate in BASSC. Sincere appreciation also goes to Alicia Bernardo, Clerk, for her time and assistance on this project.