



Children in court need lawyers of their own.  
*We're working to make sure they have them.*

## Counsel for Kids Promote Race Equity

Black and Indigenous children are overrepresented in the child welfare system relative to their representation in the general population.<sup>1</sup> High-quality legal representation can help confront and challenge racism in individual cases and is a key strategy for addressing systemic racial disproportionality and disparity.<sup>2</sup>

To advance race equity counsel for kids:

- 1 TREAT CHILDREN AND THEIR FAMILIES WITH RESPECT AND DIGNITY WHILE EXERCISING CULTURAL HUMILITY IN EVERY INTERACTION.**
  - Center children's voices to hear their experiences of racism, discrimination, and oppression<sup>3</sup> and develop culturally responsive practices.
  - Explore, research, and consult with experts to understand their client's culture, identities, and values and provide culturally informed recommendations.
- 2 RECOGNIZE<sup>4</sup> AND TAKE AFFIRMATIVE STEPS TO CHALLENGE DISPARATE TREATMENT DUE TO RACIAL BIASES, ASSUMPTIONS, STEREOTYPES AND BELIEFS ABOUT A CHILD'S CULTURE IN AGENCY REMOVAL, PLACEMENT, OR PERMANENCY DECISIONS AND JUDICIAL DECISION-MAKING.**
  - Raise and litigate evidence of bias or discrimination that impacts the case or the client.
  - Require agency to provide evidence of true safety concerns necessitating family separation. Litigate whether reasonable efforts were made to prevent removal. Ask if in-home services have been offered to the family to allow the child to remain safely in the home?
  - Hold state agency accountable for compliance with Indian Child Welfare Act's active efforts requirement to provide affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.
  - Support tribal customary adoption—a method of permanency that does not sever parental rights—when termination of parental rights would substantially interfere with the child's connection to their tribal community.
- 3 AMPLIFY A CHILD'S VOICE BY FACILITATING PRESENCE AND PARTICIPATION IN COURT HEARINGS AND CASE PLANNING MEETINGS.**
  - Counsel child on the purpose and content of the hearing, any opportunity they may have to address the court/judge orally or in writing, the timing of the hearing, possibility of virtual participation, and likelihood of attendance by other parties.
  - Ask the court to listen to a child seeking to be heard.
  - Ensure equitable access to the court and system processes (i.e., language translation, ADA accommodations).

### CONTACT

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- 4 ADVOCATE FOR PRIORITIZED PLACEMENTS WITH KIN.**
  - Present evidence in court of potential kin caregiver options. When necessary, subpoena kin to testify on their ability and readiness to serve as placement.
  - Help caregivers obtain or waive licensing or home study requirements.
  - Minimize placement changes by proactively exploring what is needed to prevent placement disruption. Request supports for the child (i.e., therapy, a mentor) or caregiver (i.e. reasonable stipends) to help maintain kin placements.
  - Fight unnecessary placement in institutions.
- 5 PROMOTE CULTURAL IDENTITY FOR CHILDREN IN FOSTER CARE BY ENSURING ACCESS TO ASPECTS OF THEIR LANGUAGE, FOOD, FAITH COMMUNITIES, HOLIDAY TRADITIONS AND MORE.<sup>5</sup>**
  - Ensure a child is given the opportunity to celebrate holidays recognized by their culture and engage in their cultural practices whenever possible.
- 6 FACILITATE FREQUENT, MEANINGFUL FAMILY TIME.<sup>6</sup>**
  - Advocate for individualized, flexible, and evolving family time that may deviate from established family time policies where certain factors or circumstances are present.
  - Ensure that visitation take place in a comfortable family-like setting or inviting public places, like parks, churches, or a home, to promote family relationships and allow the natural flow of interpersonal interactions.
  - Never allow family time to be used as a threat, discipline, or reward.
  - Insist on preserving children's healthy relationships with the broad range of individuals that may be important in a child's life and with whom continued contact would be helpful, including friends, neighbors, and extended family as defined by culture and spiritual communities.<sup>7</sup>
- 7 CONTEST THE CRIMINALIZATION OF NORMAL ADOLESCENT BEHAVIOR THAT RESULTS IN "CROSSOVER" TO THE SCHOOL DISCIPLINE, JUVENILE AND CRIMINAL LEGAL SYSTEMS.**
  - Provide educational advocacy for a child and ensure schools are compliant with federal mandates to implement an Individualized Education Plan (IEP)<sup>8</sup> or 504 plan.<sup>9</sup>
  - Participate in school disciplinary hearings to prevent unfair expulsions and police referrals.
  - Avoid foster care placements known to arrest youth for normative behaviors or mental health needs.
  - Advise children of their right to remain silent and avoid self-incrimination.

**8 ENSURE EDUCATIONAL, THERAPEUTIC, PHYSICAL, AND HEALTH SERVICES ARE NARROWLY TAILORED AND CULTURALLY INFORMED.<sup>10</sup>**

- Seek child's input on the selection of services and service providers to determine who they would feel most comfortable engaging with.
- Address any barriers to services (i.e., transportation, childcare, conflicts with employment).
- Ensure proper explanations are provided regarding mental health services to assist in eliminating the stigma surrounding the services.

**9 NORMALIZE DEVELOPMENTALLY APPROPRIATE CONVERSATIONS ABOUT RACE, RACISM, AND ITS IMPACT ON DAILY LIFE.**

- Learn how the child identifies their race/ethnicity and whether they believe they have been treated differently based on their race/ethnicity to encourage open dialogue.
- Ask the child about how they are experiencing the system (hostile, unfair, etc.).
- Partner with child to address racist acts in a manner they choose.

Endnotes

- 1 Child Welfare Information Gateway. (2021). Child welfare practice to address racial disproportionality and disparity. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/>
- 2 Id.
- 3 Pruski, Gina, January 2019. Practicing Cultural Humility Race Matters II Seminar: The Impact of Race on Criminal Justice, National Association of Criminal Defense Lawyers. Available at <https://www.nacdl.org/getattachment/8d685d93-86f4-40b5-849b-39eb495302ee/practicing-cultural-humility.pdf>
- 4 Project Implicit: Implicit Association Tests (IAT): <https://implicit.harvard.edu/implicit/takeatest.html>
- 5 Stafanson, Ariella, November 2019. American Bar Association Center on Children and the Law. Child Law Practice Today, Supporting Cultural Identity for Children in Foster Care. Available at [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/january--december-2019/supporting-cultural-identity-for-children-in-foster-care/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january--december-2019/supporting-cultural-identity-for-children-in-foster-care/)
- 6 Georgia Family Time Practice Guide, Judicial Council/Administrative Office of the Courts Division of Children, Families and the Courts: Supreme Court of Georgia Committee on Justice for Children, 2019. Available at <http://judgeleonardedwards.com/docs/family-time-georgia.pdf>
- 7 U.S. Department of Health and Human Services, Administration of Children and Families. (2020, February). Family Time and Visitation for Children and Youth in Out-of-Home Care; Trauma; Well-Being; Best Practices, Log No: ACYF-CB-IM-20- 02. <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2002.pdf>
- 8 Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (2004)
- 9 Section 504 of the Rehabilitation Act of 1973, 34 C.F.R. Part 104.
- 10 Pecora, P.J., Klein, R., Simon, J., & Foster, L.J.J. (2021). Interventions Relevant to Children and Families Being Served with Family First Funding that Have Been Shown to be Effective with Families of Color: Research Brief (First Edition) – Executive Summary. Seattle: Casey Family Programs