

SDVLP



SAN DIEGO  
VOLUNTEER LAWYER  
PROGRAM

*Pursuing justice | Transforming lives*

# Education, Guardianship, & Immigration Services SDVLP Provides

October 18, 2016

Linda Johnson, Esq.

Leslie Mackay, Esq.

The Education Law Project  
& the Guardianship Clinic Program  
are funded in part by the  
County of San Diego.

# SDVLP Services

- Restraining Orders
- Family Law
- HIV/AIDS Legal Services
- Landlord / Tenant
- Nonprofit Support
- Immigration Law Services for Children
- Education Law
- Guardianship

# Education Law Project

- Initial assessments for special education.
- Additional special education services for students not doing well in school.
- Represent students at discipline matters.
  - Both special education students and general education students.
- Assist with credits, immediate enrollment, or school of origin issues.

# Who is the Education Law Project Client?

- The minor.
- However, SDVLP works with whomever holds education rights: parents, relatives, caregivers, CASAs, and works closely with the Social Workers and Dependency Attorneys.

# Red Flags

- Student is not doing well in school: failing classes, skipping school, acting out.\*
- School denies request for special education services or assessments.
- School says they don't have the time or money for the request.
- Parent or Education Rights Holder is getting the run around from the school.

# Why is the IEP Important?

- It is a legal document that requires the school to provide certain services.
- The services are driven by the present levels of performance and the goals (not eligibility).
  - The student should have a goal for every area of need.
- The placement should be the last part of the discussion, and should be based on the services the student needs as a result of the present levels and goals.

# Discipline – Special Education

- Students who have an IEP, or are going through the assessment process are entitled to extra protections.
  - They can be suspended, but not for 10 days or more for the same type of behavior without a Manifestation Determination Review (MDR).
  - They cannot be expelled without a MDR meeting.
  - The above situations equal a change in placement.

# Discipline - MDR

- If the discipline equals a change in placement, an MDR is required:
  - 1) Did the disability cause (direct and substantive relationship to) the behavior; or
  - 2) Was the behavior a result of the school failing to implement the IEP correctly?
    - If so, placement may not be changed, discipline must stop, and further behavioral assessments or plans must be considered
    - If not, student can be disciplined like any other student
- Rationale: children should not be penalized for a manifestation of their disability!

# Discipline – General Education

- Defiance – Students in grades K-3 cannot be suspended from school for willful defiance, and no student can be expelled for willful defiance.
- Suspensions – Are allowed, and there is not much that can be done about them.
- Expulsions – SDVLP will represent students at expulsion hearings.

# Laws Specific to Youth in Care

- AB 490 – School Stability
- AB 167/216 – Lessened Graduation Requirements

# AB 490

- AB 490 allows foster children to receive:
  - Stable school placements
  - Immediate enrollment when transferring to a new district with exception of traditional requirements, such as proof of residency, records, medical records, etc.
  - Calculation for partial credit of grades despite attendance for a short period of time.

# AB 167/216

- AB 167 reduces the number of credits needed to graduate for students in foster care.
- In order to take advantage of AB 167/216, students must transfer schools after completing their second year of high school.
  - This can be time in school or credits.
- The graduation requirements become the California State requirements instead of the individual school or district requirements.
- Students have a right to remain in school for a 5<sup>th</sup> year, if they can complete all the district requirements for graduation during their 5<sup>th</sup> year.

# Referring a Case to the Education Law Project

- Call SDVLP to discuss the issue.
- Submit a referral form to SDVLP.
- If SDVLP can take the case, submit an ex parte appointment order to the dependency court.
- Send the appointment order to SDVLP (the court does not do this on its own).
- If SDVLP cannot assist, SDVLP can provide referrals to other agencies.
- When the education issue is resolved, SDVLP will notify the Social Worker and Minor's Attorney to have SDVLP removed from the case.

# IMMIGRATION LAW SERVICES FOR CHILDREN

## Myth or Fact?

1. Undocumented children cannot be deported.
2. Undocumented children in foster care cannot be deported.
3. If an undocumented child is adopted by a U.S. citizen parent, then the child will automatically become a U.S. citizen once adopted.
4. If an undocumented child crosses into the United States illegally, they can never receive legal status in the U.S.
5. If an undocumented child commits a crime, they can never receive legal status in the U.S.

# IMMIGRATION LAW SERVICES FOR CHILDREN

## Myth or Fact? THESE ARE ALL MYTHS

1. Undocumented children cannot be deported.
2. Undocumented children in foster care cannot be deported.
3. If an undocumented child is adopted by a U.S. citizen parent, then the child will automatically become a U.S. citizen once adopted.
4. If an undocumented child crosses into the United States illegally, they can never receive legal status in the U.S.
5. If an undocumented child commits a crime, they can never receive legal status in the U.S.

# Special Immigrant Juvenile Status

- Federal law that allows undocumented children who are abused, neglected, or abandoned obtain lawful permanent residency in the U.S.
- In 1990, Congress created SIJS.
- Most recently, Congress, through the Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA), amended and expanded the definition of SIJS.

# 3 Step Process

- Step 1: Child is part of a “Juvenile Court” case.
- Step 2: The Judge of the “Juvenile Court” case makes special findings about the child (SIJS findings).
- Step 3: The child applies to United States Citizenship and Immigration Services for Special Immigrant Juvenile Status and Legal Status

# Step 2

- Step 2: The Judge of the “Juvenile Court” case makes special findings about the child (SIJS findings).
  - The minor is a dependent of a juvenile court
  - Reunification with at least one parent is not viable due to abuse, neglect, or abandonment
  - The minor’s return to their country or their parents’ country of nationality or last habitual residence is not in the child’s best interest.
- Child must be under 21, not married, and under the continued jurisdiction of the juvenile court

# IMMIGRATION LAW SERVICES FOR CHILDREN



To Refer a Case, Please Contact:

Leslie Mackay, Esq.

[lmackay@sdvlp.org](mailto:lmackay@sdvlp.org)

(619) 235-5656 Ext. 104

San Diego Volunteer Lawyer Program, Inc.

# Guardianship Clinic Program



- SDVLP operates weekly clinics to assist in obtaining or objecting to guardianships in Probate Court.
- Services in Spanish & English
- Services are provided on a walk-in basis at:  
SDVLP: 707 Broadway, Ste. 1400, 92101  
Tuesdays & Thursdays: 12:00 p.m. – 5:00 p.m.

# WHY DO CHILDREN NEED A GUARDIAN?

- To obtain medical care
- To obtain therapy
- Caregiver lives in Section 8 housing
- Waivers for school sports
- Parents are unsafe
- Parents abandoned child
- To add to insurance
- To obtain certain public benefits
- Parent is terminally ill
- Parents are deceased
- Child Welfare Services will otherwise place child in foster care
- Parents location unknown
- School enrollment

# WHAT IS GENERAL GUARDIANSHIP?

- Long term, care, custody and control of the child, generally able to obtain medical insurance and certain public benefits
- Minor must already be living with the proposed guardian (few exceptions)

# Timeline – San Diego

- Complete Forms/Sign/Copy/File
  - Investigation started
- Temporary Hearing: 1-2 weeks
- Investigation: 1-2 months
- General Hearing: 2-4 months
- Trial (only for contested matters): Depends on court's availability

# THANK YOU!!

