

A Second Look at *In re A.K.*, Addressing Cultural Issues in A/N/D Cases

This entry was contributed by [Sara DePasquale](#) on September 6, 2024.

The North Carolina Court of Appeals in *In re A.K.*, ___ N.C. App. ___ (Aug. 6, 2024) addressed a parent’s right to be represented by a privately retained attorney of their choosing in an abuse, neglect, and dependency (A/N/D) action. See Timothy Heinle’s post discussing that issue [here](#). The opinion also discusses issues related to the mother’s and child’s culture – their religion and language. This post explores those aspects of the opinion.

Who Are the Families and Children that Are Involved in Child Welfare?

Over the course of calendar year 2023, 15,885 children in North Carolina were in the custody of a county department of social services (DSS). Statistics identify the race of those children. The majority of children in DSS custody (56.3%) were white. Almost one out of three children (29.23%) were black. The remaining children were Hispanic (8.59%), Native American (3%), or “other race” (11.48%). See Child Welfare Statistics [here](#). There are, of course, other aspects of culture such as religion and national origin that are not identified in these statistics. Yet, we know that families from all races, ethnicities, religions, socioeconomic status, and more are involved in North Carolina’s child welfare system.

How Does the Law Address Demographics?

Despite the differences amongst these families and children, the Juvenile Code (G.S. Chapter 7B) does not explicitly identify these issues in a way that contemplates how the court or DSS should address them. Few references are made to these issues. See G.S. 7B-505(d), -506(h)(2) (referring to the Indian Child Welfare Act (ICWA) and the Multiethnic Placement Act (MEPA)); G.S. 7B-505.1(c)(3) (identifying bona fide religious objections to immunizations by some parents); G.S. 7B-528(a) (requiring the Department of Health and Human Services to create user-friendly information about infant safe surrender in commonly spoken and read languages in the State).

The North Carolina Administrative Code requires agencies (including DSS) to recruit potential foster and adoptive parents that “reflect the ethnic and racial diversity of children in the State.” 10A NCAC 70M .0304(a). The religion of a child’s parent or guardian should be included in the case record for any child in DSS custody. 10A NCAC 70G .0506(a)(1)(B).

Federal laws do apply to A/N/D cases. Some of those federal laws include ICWA, MEPA, and Title VI of the Civil Rights Act of 1964 (Title VI). MEPA and Title VI are anti-discrimination laws based on race, color, and national origin. Both laws apply to parents, children, relatives, placement providers, and prospective adoptive parents. MEPA focuses on

placement. Title VI is more comprehensive and explicitly addresses language barriers for someone with limited English proficiency (LEP). ICWA is a federal law that requires courts to determine if the child is an Indian child and if so to apply the extra protections of ICWA, which has a dual purpose of protecting the stability and security of Indian tribes and the best interests of Indian children. For a discussion of ICWA, MEPA, and Title VI, see the A/N/D TPR Manual, Chapter 13 [here](#).

In re A.K.: The Relevant Facts

In re A.K. involved two children who were alleged to be neglected based on circumstances created by their mother. Mother speaks Albanian and is Muslim. The DSS social worker used an interpreter through a language line to communicate with Mother. Based on concerns for the children's safety and wellbeing, DSS filed a petition and obtained nonsecure custody of the children. The nonsecure custody order addressed the children's cultural needs by ordering " 'the children are of the Islamic/Muslim faith and do not eat pork,' that 'the juveniles shall not attend any religious services other than Islamic services,' and that 'all visits are to be conducted in English.' " Sl.Op. at 4. The initially scheduled pre-adjudication, adjudication, and dispositional hearing was continued, and the order of continuance determined Mother required a Rule 17 GAL to assist her because of mental health concerns based on allegations in the petition about Mother's behavior and the "mother's inability to understand the proceedings and cultural barriers." Sl.Op. at 5. A Rule 17 GAL was appointed to Mother. At the later held adjudication hearing, the children were adjudicated neglected. The court did not allow Mother to be represented by her chosen privately retained attorney. Mother appealed, and the court of appeals vacated and remanded the case.

Title VI: Language Services

Title VI applies to any program or service that receives federal financial assistance, which can be direct or indirect assistance. See 45 C.F.R. 80.2. DSS and the courts provide services that receive federal financial assistance and includes contract providers with DSS (e.g., a parenting program) as well as divisions within the agency such as the Guardian ad Litem Program and Indigent Defense Services at the NC Administrative Office of the Courts. Discrimination based on national origin may occur when a person or group is denied a meaningful opportunity to participate in the program or service because of language access issues. See *Lau v. Nichols*, 414 U.S. 563 (1974).

In *In re A.K.*, the DSS social worker who was assessing the neglect report complied with Title VI by communicating with Mother through the use of a language interpreter, given the language barriers based on Mother's national origin. In this case, the courts, the GAL, and

the parent attorney should also have used a language interpreter to communicate with Mother. The court ordered visits be conducted in English. For parents who speak no English or whose English is extremely limited, Title VI may require an interpreter be provided so that the interpreter can inform a visit supervisor of any inappropriate conversations and interpret between the parent and visit supervisor.

Translation services may be required for vital documents (e.g., the case plan or adjudication and initial disposition order) depending on a four-factor analysis, which includes the

1. number or proportion of LEP persons from a particular language group eligible to be served or encountered by the program,
2. frequency with which the LEP persons come (or may come) into contact with the program,
3. nature and importance of the program, activity, or service provided by the program to the people's lives, and
4. resources available to the grantee/recipient and costs.

The four-factor analysis may result in different language assistance measures being provided for different types of programs or activities. Regarding the third prong and the importance of the program to the people's lives, child welfare services involve government intervention in a family's life that impacts constitutional rights of parents and children and may ultimately result in a termination of parental rights, which legally severs the parent-child relationship. Regarding the first prong, the most commonly spoken non-English languages in North Carolina are Spanish, Chinese, French, and Arabic. See "Language Characteristics of North Carolina's Population" on the Office of State Budget and Management [website](#). Knowing the language characteristics in a given county will be helpful in determining what level of language services are required under Title VI.

Decisions about Children in DSS Custody

Under federal and state law, children who are placed in DSS custody are subject to the reasonable and prudent parent standard. This standard is

characterized by careful and sensible parental decisions that are reasonably intended to maintain the health, safety, and best interests of the child while at the same time encouraging the emotional and developmental growth of a child that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, *cultural*, and social activities.

G.S. 131D-10.2A(a); 42 U.S.C. 675(10)(A) (emphasis added).

Prior approval of the court or DSS is not required when a placement provider uses the reasonable and prudent parent standard to make decisions about a child's participation in normal childhood activities. The court has authority to impose parameters on a placement provider's authority to make decisions including designating someone else as the decision-maker. G.S. 7B-903.1(b). Separately, DSS, as the custodian, has the right to make decisions that are generally made by a child's custodian unless the court delegates that authority to someone else, like a parent. G.S. 7B-903.1(a).

In *In re A.K.*, the court ordered that the children should not attend religious services that are not Islamic and acknowledged the children's faith-based food restrictions. The order provided clear directions to DSS about these issues, directions which DSS should share with the children's placement provider. The order also recognized a parent's constitutional right to determine their child's religious upbringing. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972). A child's attendance at a religious service may be a normal childhood activity; however, questions arise when the religious service is not of the child's faith. Specifically addressing the child's faith in an order may be prudent, whether that faith involves services, specific practices, or restrictions.

Culture involves more than religion. As an example, hair is significant in Native American and Black cultures. A haircut or hair style may mean more than mere appearance. Identifying cultural issues and raising them in court can provide clarity and ensure that children are able to continue their cultural norms when placed in DSS custody. DSS should be addressing cultural issues regardless of whether there is a court order addressing culture. The North Carolina Child Welfare Manual addresses the need to respect cultural diversity in its [Cross-Functions](#) section (see pages 296-306).

The GAL for Mother

The appointment of a Rule 17 GAL for Mother raised serious questions for the court of appeals. My colleague, Timothy Heinle, will be writing a blog post discussing that issue in more detail. Generally, a Rule 17 GAL may only be appointed following a hearing and determination by the court in the A/N/D action that the parent is incompetent. Language and cultural barriers do not equate to incompetency.