

Council For Children
Gary F. Redenbacher, Chair
Gary Richwald, M.D., M.P.H., Vice-Chair
Robert L. Black, M.D.
Denise Moreno Ducheny
Anne Fragasso
John M. Goldenring, M.D., M.P.H., J.D.
Sharon Kalemkiarian
Hon. Leon S. Kaplan (Ret.)
James B. McKenna
David Meyers
Thomas A. Papageorge
Gloria Perez Samson
Alan Shumacher, M.D.

Emeritus Members
Birt Harvey, M.D.
Louise Horvitz, M.S.W., Psy.D.
Paul A. Peterson
Blair L. Sadler
Owen Smith



University of San Diego School of Law
5998 Alcalá Park / San Diego, CA 92110
(619) 260-4806 / (619) 260-4753 (Fax)

1107 Ninth Street, Suite 880
Sacramento, CA 95814 / (916) 844-5646

1023 15th Street NW, Suite 401
Washington, DC 20005 / (917) 371-5191

Reply to: San Diego Sacramento Washington
info@caichildlaw.org / www.caichildlaw.org

Executive Director Robert C. Fellmeth
Price Professor of Public Interest Law, USD School of Law

Comments on Proposed Rules for the Adoption and Foster Care Analysis and Reporting Systems (AFCARS), dated February 9, 2015 (ACF-2015-0001-0001)

**Submitted by the Children's Advocacy Institute
April 10, 2015**

The Children's Advocacy Institute (CAI) of the University of San Diego School of Law is an academic, research, and advocacy organization working at the state and federal levels to improve the health and well-being of children and youth. A significant portion of our research and advocacy is aimed at reforming aspects of the child welfare, child protection, foster care, and dependency court systems in order to improve the experiences and outcomes for the children and youth whose lives are touched — and in many cases, forever changed — by these systems.

We appreciate the opportunity to provide input on the Administration for Children and Families' (ACF) proposed rules to update the Adoption and Foster Care Analysis and Reporting System (AFCARS). CAI is pleased to see ACF engaged in rulemaking in the area of child welfare, and we believe that many of the proposed amendments will significantly improve our society's understanding of what is happening to these children and youth, and to what extent the systems noted above are appropriately meeting their needs and protecting their interests.

For all those who are working to enhance the safety and well-being of abused and neglected children, having access to timely, complete, accurate data about these children and youth is critical. Because CAI believes that several of the proposed rules could be augmented or changed to ensure more robust collection of meaningful, useful data, we respectfully submit the following comments for ACF's consideration.

Comment 1: Proposed rule 1355.43(b) [p. 7207, child information]

Proposed rule 1355.43(b) includes several data elements regarding a child's health conditions, and rule 1355.43(b)(7) requires information on whether a child was diagnosed by a qualified professional as having a health, behavioral or mental health condition, as specified, prior to or during the child's current out-of-home care episode as of the last day of the report period. We believe that AFCARS should further require information on whether a child has been prescribed medications to address any diagnosed health, behavioral, or mental health conditions, including but not limited to psychotropic medications. Because inappropriate use of psychotropic medications in children is a growing concern, particularly in vulnerable populations such as children in foster care, it would be extremely useful to know the rates of use for this population. We also believe that AFCARS should require data on what types of services children in foster care are receiving to address their diagnosed health, behavioral, or mental health conditions, other than by the use of prescription medication.

Comment 2: Proposed rule 1355.43(b)(8)–(12) [p. 7208–7209, child information — educational information]

Educationally-related child information that would be reported by a title IV-E agency pursuant to new section 1355.43(b) pertains to school enrollment, educational level, educational stability, special education status, and IDEA qualifying disability. However, we believe that one of the most critical facts to know about children and youth in foster care is whether they have an educational rights holder, and if so, who that individual is in relation to the child. Our experience informs us that children in foster care often go long periods of time without having an identifiable, responsible party holding their educational rights and appropriately advocating on their behalf. Requiring title IV-E agencies to indicate who the educational rights holder is for each child (*e.g.*, parent, foster parent, CASA, etc.), or that one does not exist, will help inform regulators and advocates as to the severity of this problem so they can take appropriate action.

Comment 3: Proposed rule 1355.43(b)(8) [p. 7208, child information — school enrollment]

We join fellow advocacy groups in supporting the inclusion of basic information to track a child’s enrollment in school. Making this information mandatory for states to collect sends the clear message that while in the custody of child welfare agencies, school-age children must be enrolled in school. We believe that the following changes to this proposed element would help make the data gathered as meaningful as possible:

- **Include early childhood options:** School enrollment options should include enrollment in “early childhood education,” defined to include any pre-K program, Early Head Start, Head Start, and Part C (infants and toddlers) and Part B pre-school programs under the Individuals with Disabilities Education Act.
- **Capture part-time higher education enrollment:** School enrollment options with regard to higher education should not only include “full time” enrollment, but must be expanded to include enrollment on a part-time basis.
- **Clarify the term “enrolled”:** We would suggest clarifying that the term “enrolled” means enrollment *and attendance* in that program
- **Capture number of absences.** We suggest adding a data element that indicates the number of school days a child missed during the report period, and the reason for each absence (*e.g.*, sickness, delay in transferring to new school, court appearance, etc.).

Comment 4: Proposed rule 1355.43(b)(9) [p. 7208, child information — educational level]

Subsection(b)(9) of rule 1355.43, regarding a child’s educational level, provides that a title IV-E agency should indicate that a child has completed post-secondary education or training “if the child has completed any post-secondary education or training, including vocational training, other than an education pursued at a college or university.” Agencies are to indicate that the child has completed college “if the child has completed at least a semester of study at a college or university.”

We believe that these response options and the definitions might result in the submission of inconsistent data. For example, many post-secondary schools that offer vocational training use the word “college” in their names, and for that reason the agency might categorize a student who attained postsecondary at that school by using the “college” response option instead of the “postsecondary” response option. We believe that the following response options might provide more guidance to those providing the data:

- Vocational or training school
- Community, junior or two year college
- Four year college or university

Comment 5: Proposed rule 1355.43(b)(9) [p. 7208, child information — educational level]

Because AFCARS provides one of the few glimpses into the lives of children in foster care, we believe that IV-E agencies should be required to provide information about the choices that non-minor dependents are making with regard to their post-secondary educational options. It would be extremely helpful to require IV-E agencies to provide more information on the specific type of post-secondary institution non-minor dependents are attending. We suggest that response options be added to indicate if a youth is attending, *e.g.*, a public post-secondary school; a private, non-profit post-secondary school; or a private, for-profit post-secondary school.

Comment 6: Proposed rule 1355.43(b)(9) [p. 7208, child information — educational level]

With regard to a student’s educational level, we question why there is no further distinction in educational attainment beyond having completed “any post-secondary education or training” at an institution other than a college or university, or “at least a semester of study” at a college or university. It would be extremely useful to know how far these youth go in their post-secondary studies while they are still in the foster care system. We would suggest that the response options inquire as to the level of completion (*e.g.*, did they receive a certificate or degree as a result of their completion of “any post-secondary education or training” at an institution other than a college or university, and regarding their studies at a college or university, exactly how many semesters of study did they complete as of the last day of the report period, and did they receive a degree as a result of their completion of their course of studies).

Comment 7: Proposed rule 1355.43(b)(10) [p. 7208, child information — educational stability]

We share fellow advocates’ concerns that there may be multiple school moves within a six-month period, but only one school change would be captured by the proposed reporting element. We recommend providing a means to capture all school moves that occurred during the six-month report period, as well as the applicable reason for each move.

Regarding the reasons for school changes, we also join advocates who suggest adding additional options within the existing data element that will indicate whether such moves are in the child’s best interest (such as moving to a relative’s home in another state) or not (such as a lack of living placement options in the child’s school district).

Comment 8: Proposed rule 1355.43(b)(18)-(19) [p. 7211, child information — victim of sex trafficking prior to entering foster care or while in foster care]

When youth have been identified as being the victims of sex trafficking (whether it took place prior to or after entering foster care), it is imperative that they receive services and treatment that specifically address this type of victimization. We suggest that data elements be added that require IV-E agencies to indicate the types of services that have been provided to each youth, such as specialized health and mental health assessments and treatment, specialized recovery programs, intensive case management, placement options that minimize contact with prior exploiters, etc.

Comment 9: Proposed rule 1355.43(d)(3) [p. 7211, removal information — environment at removal]

With regard to the type of environment the child was living in at the time of each removal for each removal reported, we agree with other advocates who suggest the addition of a category of “homeless” as a response option.

Comment 10: Proposed rule 1355.43(d)(5) [p. 7212, removal information — child and family circumstances]

With regard to the child and family circumstances that were present at the time of the child’s removal and/or related to the child being placed into foster care for each removal reported, we agree with other advocates who suggest the addition of response options that would capture those children who enter foster care because their parent is detained for immigration or deported; children who are classified as “unaccompanied minor immigrant.” We also support adding a response option to indicate that “educational neglect” was a circumstance present at the time of the child’s remove and/or related to the child being placed into foster care.

Comment 11: Proposed rule 1355.43(g)(3) [p. 7217, general exit information — exit reason]

Subsection (g)(3) of rule 1355.43 requires IV-E agencies to indicate the reason for each of the child’s exits from out-of-home care. One of the options is to enter “death of child” if the child died while in out-of-home care. We believe that it would be helpful to have agencies differentiate between causes of death, such as:

- Death of child – natural causes
- Death of child – accident
- Death of child – maltreatment
- Death of child -- undetermined

Comment 12: Proposed rule 1355.43(g)(3) [p. 7217, general exit information — exit reason]

Also with regard to subsection (g)(3) of rule 1355.43, we agree with other advocates that the list of exit reasons is missing critical response options relevant to young adults in extended foster care, and we agree that the following two exit reasons should be added:

- Became ineligible for extended foster care – *defined as a young adult no longer meeting the state’s eligibility requirements for extended foster care*
- Voluntarily left extended foster care – *defined as a young adult opting out of extended foster care, including those who do not explain why they are no longer in extended foster care, yet cease engaging.*

Comment 13: Proposed rules 1355.45 and 1355.46 [pp. 7220-7221, compliance and penalties]

Finally, we fully support ACF’s decision to implement the congressional mandate to withhold funds from a title IV–E agency that fails to submit data as required by law. As ACF itself acknowledged in ACF-2007-0125-0001,

“States were required to report the first AFCARS data to us for FY 1995. However, it was not until FY 1998, when we implemented AFCARS financial penalties for a State not submitting data or submitting data of poor quality that the data became stable enough for ACF and others to use for a wide variety of purposes.”

We can only imagine how ACF’s 2002 decision to refrain from imposing penalties on states for noncompliance with the data submission requirements has detrimentally impacted the quality, completeness, and reliability of the data upon which we have depended for the past twelve years. While we appreciate ACF’s willingness to now implement its authority to impose penalties for such noncompliance, we are concerned as to why ACF is proposing to exempt from the compliance standards and penalties data on “most of the children in optional title IV–E programs” — especially when ACF acknowledges the importance of such information and the need that agencies submit “quality data.” We suggest that where a IV-E agency has exercised the option to implement a title IV–E guardianship assistance program or an extended foster care program, information relevant to those children and youth must remain subject to the compliance and penalty provisions.

The Children’s Advocacy Institute greatly appreciates the effort that ACF is taking to improve AFCARS, which will in turn improve the quality, reliability, completeness, and usefulness of the data that is reported. We look forward to working with you to continue to promote the health and well-being of children and youth in foster care.

Sincerely,



ELISA WEICHEL
CAI Administrative Director /
Staff Attorney



CAI National Policy Director /
Senior Staff Attorney