

# **Request for Public Comment and Consultation Meetings on the Adoption and Foster Care Analysis and Reporting System (AFCARS)**

**Submitted By The**

**American Bar Association**

**October 21, 2010**

Pursuant to the notice published in the Federal Register on July 23, 2010 (75 Fed. Reg. 141), the American Bar Association submits these comments and recommendations on regulations to be issued under the Adoption and Foster Care Analysis and Reporting System (AFCARS).

The ABA has long been committed to improving the education outcomes of children in care, and in August 2009 the House of Delegates unanimously passed an education policy urging, among other things, federal and state legislatures to pass laws and child welfare and education agencies to implement and enforce policies that advance a child's right to remain in school, complete school and obtain a high quality education.

## **Introduction: Importance of Collecting Education Information**

For children in out-of-home care, educational success is a potential positive counterweight to abuse, neglect, family separation and impermanence. A child's educational experience is closely tied to his or her child welfare system experience. If a child is struggling or unsuccessful in school it can have a tremendous impact on the safety and permanency goals and finalization of a stable living arrangement.

Unfortunately, the educational outcomes for children in out-of-home care are generally dismal. Data on education outcomes is limited, particularly national data. However, the existing data makes clear that this serious issue must be addressed to ensure the educational success of children in out-of-home care.

Child welfare agencies working with children and families need to have basic information about a child's education performance and placement to appropriately meet the needs of the child and achieve permanency. Requiring state child welfare agencies to report simple, basic education data elements as part of the federal AFCARS requirements ensures:

- Basic information about a child's educational experience is known by the agency;
- A comprehensive picture of the child's foster care experience is captured that includes important education information;
- Attention is given to critical education issues and concerns that can help promote permanency and stability for the child; and
- Comprehensive statewide and national data on the educational experiences of children in out-of-home care (that is not available elsewhere) is available.

It is important to clarify that inclusion of education data elements, particularly elements relating to educational performance, is not intended to imply sole accountability on the part of child welfare agencies around the outcomes collected, or to imply that the state should be determined non-compliant based on that data. However, without tracking education outcomes such as special education enrollment and grade retention, we cannot begin to identify actions needed to address these outcomes.

## **I. Response to Question 3: Federal Oversight Activities**

### Direct Language and Question from the Request for Public Comment:

*The Children’s Bureau uses AFCARS data to support a number of our oversight activities in relation to the title IV–B and IV–E plans, including the Child and Family Services Reviews.*

*3. What case level data on foster care, adoption and guardianship is important for agencies to collect and report to ACF on an ongoing basis that can inform future Federal monitoring activities, such as the Child and Family Services Reviews?*

*• Is there data related to safety, permanency and well-being that is essential to monitoring activities that is not collected currently?*

### Response:

The Adoption and Foster Care Analysis and Reporting System (AFCARS) requires each participating state to collect “snapshot data” – a review of individual case files every six months with reference to a set of required data elements. Adoption and foster care data are separately reported on an annual basis. While the adoption file contains 45 data elements and the foster care file contains 89 elements, *none* of these data elements directly addresses education.

Since these AFCARS data elements were developed, there has been increasing focus on the child welfare agency’s attention to the education outcomes of children in foster care. Under the Child and Family Services Reviews (CFSRs), the federal government now monitors as a case factor whether “children receive appropriate services to meet their educational needs” (Well-Being Outcome 2). Additionally, under Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) further changes relating to the child welfare agency’s responsibilities regarding a child’s education were made. Under the law, the child’s case plan must include assurances that the placement takes into account proximity to the school in which the child was enrolled at the time of placement and the appropriateness of the educational placement. The new law also requires that child welfare case plans include assurances of collaboration with local education agencies to *ensure* that a child remains in her home school. If it is not in the child’s best interest to remain in that school, the new law requires that the child be immediately and appropriately enrolled in a new school, with all education records provided to the new school. Another significant change in the law is a new state plan

requirement that requires child welfare agencies to provide assurances that all children eligible under Title IV-E are enrolled in and attending school.

We know from existing state studies that children in out-of-home care are scoring significantly below their peers on standardized tests, and have lower reading levels and grades in core academic subjects. Additional numerous local, state, and regional studies have revealed anywhere from 2 to 4 times as many youth in out-of-home care have repeated grades compared to their non-foster care peers.

AFCARS data already reveals that children in out-of-home care have an average of 1 to 2 changes in their living arrangement per year (2002 AFCARS data). Smaller state and regional studies have revealed large percentages of children moving schools upon entering, and throughout their time in out-of-home care. A 2001 Washington State study revealed twice as many youth in out-of-home care as youth not in care had changed schools during the year. In the Midwest Study conducted by Chapin Hall, over a third of the young adults reported having had 5 or more school changes during their time in out-of-home care.

High rates of school mobility often are the cause for students to fall behind academically and increase the likelihood that they will not graduate. Furthermore, studies indicate that when school changes occur re-enrollment is often delayed, causing students to miss valuable school time

To ensure that agencies are meeting the educational needs of children in their care, and to identify where additional support is needed, AFCARS must include data elements to track the following critical education areas: A) school stability, enrollment and attendance; B) academic performance; C) special education and early intervention services for children in care with disabilities; D) education decision-making authority; E) education records; f) Early Education; and G) Postsecondary Education

#### A. School Placement Stability, Enrollment and Attendance

Fundamental to ensuring school success for children in care is to ensure they are attending a stable school placement. Critical to this inquiry will be that 1) children remain in their same school at initial and subsequent placements into care, unless not in their best interest; 2) children are immediately enrolled in a new school when in their best interest to change schools during initial and subsequent placements; and 3) children enrolled in school are attending regularly. Important to developing data elements that accurately reflect school stability, “school changes” must clearly not include school moves throughout a child’s education matriculation including from elementary school to middle school or middle school to high school.

#### **SUGGESTED EXAMPLES OF NEW DATA ELEMENTS:**

- 1. At the initial time of placement did the child:**
  - a. Not applicable; child not school age**
  - b. Remain in the same school; living in the same district**

- c. **Remain in the same school, even though living in different school district**
  - d. **Child immediately enrolled in a new school, with records transferred**
  - e. **Child immediately enrolled in a new school, without records transferred**
  - f. **Child enrolled in a new school, but enrollment was not immediate**
  - g. **Child not enrolled or attending school**
2. **At any subsequent change of placement did the child (answer for each placement change):**
- a. **Not applicable; child not school age**
  - b. **Remain in the same school; living in the same district**
  - c. **Remain in the same school, even though living in different school district**
  - d. **Child immediately enrolled in a new school, with records transferred**
  - e. **Child immediately enrolled in a new school, without records transferred**
  - f. **Child enrolled in a new school, but enrollment was not immediate**
  - g. **Child not enrolled or attending school**
3. **Was the child, throughout the current reporting period, enrolled in and attending elementary or secondary school?**
- a. **Child not yet compulsory school age**
  - b. **Child attending school and missed less than 10 school days throughout the school year**
  - c. **Child attending school but missed 10 or more days throughout the school year**
  - d. **Child not attending school**
  - e. **Child has completed K-12 education**

**(For additional suggested elements related to school stability see Part II, # 13 – 16 below)**

B. Academic Performance

Critical to ensuring that the child welfare agency is meeting the education needs of children in care is evaluating the child’s performance when they first entered care as well as their performance during their time in care. Determining if children are performing at grade level by key subjects, such as reading and math, would provide additional information to evaluate their academic performance. Finally, tracking whether a student has repeated a grade is an excellent factor to determine well-being because it is so closely tied to increased drop out rates. Of course, there are many factors that contribute to a child’s academic performance, but collecting data on these topics will provide the systems and families critical information about his or her academic growth.

**SUGGESTED EXAMPLES OF NEW DATA ELEMENTS:**

4. **Was the child performing at or above grade level upon entry into foster care?**
- a. **Yes**
  - b. **No**

**5. Is the child currently performing at or above grade level?**

- a. Yes**
- b. No**

**6. Has the child repeated a grade during this reporting period?**

- c. Yes**
- d. No**

C. Individuals with Disabilities Education Act (IDEA) Special Education and Early Intervention Services

Numerous studies indicate anywhere from 23% to 47% of children and youth in out-of-home care receive special education services at some point in their schooling (compared to the national average of 12% of school aged children). Inclusion of a data element that identifies how many children are receiving special education services would give, for the first time, concrete statewide and national data on the numbers of children in out-of-home care receiving services. This data element applies equally to children birth to age 3 through IDEA Part C Early Intervention as well as children age 3 to 21 through IDEA Part B Special Education. This concrete data can be used to track increases and decreases in early intervention and special education identification, and engage state and federal agencies to focus on children with disabilities and delays.

**SUGGESTED EXAMPLE OF NEW DATA ELEMENT:**

**7. What is the child's special education/early intervention involvement?**

- a. Child not referred for special education or early intervention services**
- b. Child referred and evaluated for special education or early intervention services, but found ineligible**
- c. Child referred for special education or early intervention services, evaluation not yet completed**
- d. Child referred and found eligible for special education or early intervention services, currently receiving services**
- e. Child referred and found eligible for special education or early intervention services, agreed-upon services not being provided**

D. Education Decision-making Authority

For children in foster care, there are a number of adults involved in their lives, but it is not always clear who has the legal authority to make educational decisions on their behalf. To evaluate whether a birth parent maintains this authority or another individual has been identified to serve in this role, and to continue to review this at each stage of the child welfare case, AFCARS should include an element clarifying who has this authority to make general and/or special education decisions. The data element could determine whether or not a decision maker has been identified, or could be expanded to identify the exact individual, such as parent, foster parent or caseworker, who has been identified.

Finally, because the decision maker may be a different individual depending on whether the decision is related to general or Special Education decision-making, a data element could separate this into more than one question.

**SUGGESTED EXAMPLE OF NEW DATA ELEMENT:**

- 8. Is the person authorized to make general and/or special education decisions for the child identified in writing in the case plan?**
- a. Yes**
  - b. No**

E. School Records

Title IV-E of the Social Security Act requires each child's case plan to include: the child's education records, the most recent contact information of the child's health and educational providers, the child's grade level performance, the child's school record, a record of the child's immunizations, the child's known medical problems, the child's medications, and any other relevant health and education information concerning the child determined to be appropriate by the child welfare agency. The child welfare agency must also regularly review and update each child's education record and supply it to every foster parent or foster care provider with whom the child is placed in out-of-home care. Finally, the child welfare agency must provide a copy of the child's education record to every child who reaches age 18. Maintaining up-to-date records in the case file assists with supporting a child's education performance and with tracking a child's progress and services. It also assists with smooth transitions and record transfers between living and school placements.

**SUGGESTED EXAMPLE OF NEW DATA ELEMENTS:**

- 9. Is the child's complete and up-to date education record included in the case plan?**
- a. Yes**
  - b. No**

F. Early Education

Critical to addressing the pre-school needs of young children is linking them to the full range of early learning programs available. Growing research demonstrates the importance of pre-school programs and services to support school readiness. All too often, when considering the education needs of children in care, the needs of young children are not addressed. Above (see #7) we have suggested the inclusion of a data element to track those young children who need IDEA Part C Early Intervention services. Because access to early learning programs is linked to education success for all children, tracking the access all young children in care (both with and without developmental delays or disabilities) to these programs is important. Rather than just tracking

enrollment in enriched early learning programs such as Head Start, this data element could be broken down to determine if a child has been referred or applied for a program, but has not been enrolled because of lack of availability, waiting lists, or other reasons.

**SUGGESTED EXAMPLE OF NEW DATA ELEMENT:**

- 10. If the child is age 3-5, are they enrolled in an enriched early learning program (other than IDEA Part C early intervention services)?**
- a. Yes**
  - b. No**

G. Post-Secondary Education

Like other students, youth in care want postsecondary education; however research indicates that they realize this dream less frequently than the general population. To achieve their full potential, older youth in care and those exiting care need support and opportunities around postsecondary education. While additional information on this topic will be available through the National Youth in Transition Database, because that data will not track every child in care, AFCARS must also collect, at a minimum, data about the high school graduation rates and postsecondary education entrance rates for children currently in care.

**SUGGESTED EXAPLES OF NEW DATA ELEMENTS:**

- 11. Has the child successfully completed high school or equivalent?**
- a. Not applicable**
  - b. Yes, with a high school diploma**
  - c. Yes, with a certificate of completion**
  - d. Yes, with a GED**
  - e. No, not yet completed, but continuing to work toward completion**
  - f. No, child is no longer working toward HS completion**
- 12. Is the child working toward completion of a post-secondary education program?**
- a. Not applicable**
  - b. Yes, the child is actively working on applying and acceptance into a post-secondary education program, but not yet enrolled**
  - c. Yes, the child is currently enrolled in a post-secondary education program**
  - d. Yes, the child has completed a post-secondary education program**
  - e. No**

**II. Response to Question 4: Fostering Connections to Success and Increasing Adoptions Act**

Relevant Language and Question from Request for Public Comment:

*Fostering Connections created a number of new title IV–E plan provisions and provided Federal funds for agencies that choose to support older youth up to age 21 and children in guardianships.*

*4. What case level data would support the monitoring of compliance by title IV–E agencies and outcomes for children in relation to the new provisions?*

*• Fostering Connections requires that an agency ensure that children receiving title IV–E are enrolled in school or have graduated, that an educational stability plan is in place for children in foster care; and, provides Federal reimbursement of some costs to transport a child in foster care to his/her original school. What data would be important to collect with regard to a child’s education in relation to these provisions?*

**Response:**

As stated in our commentary above, high rates of school mobility often are the cause for students to fall behind academically and increase the likelihood that they will not graduate. Furthermore, studies indicate that when school changes occur re-enrollment is often delayed, causing students to miss valuable school time. The new requirements of Fostering Connections are now a critical vehicle to address this school instability and give children in care an opportunity to have a stable educational experience.

AFCARS data could track the education requirements of Fostering Connections closely: 1) whether the child welfare agency considered and documented the appropriateness of the educational setting and the proximity of the living placement to the educational setting at each and every placement change; 2) whether the child welfare agency considered and documented the best interest determination about school; 3) how often a change in living placement *did not* result in a school change; 4) how often changes in schools occur during a reporting period; 5) total number of school moves children a child is experiencing while in out-of-home care; 6) details about delays in re-enrollment when school moves occur (i.e., how long, for what reason); 7) actual enrollment dates and attendance rates should be tracked to meet the state IV-E plan obligation to ensure children are enrolled and attending school, agencies should track within AFCARS.

**SUGGESTED EXAMPLES OF NEW DATA ELEMENTS:**

See school stability and continuity section above and **Suggested Data Elements #1, 2, and 3** for critical core suggestions for new data elements. Additionally, here are other suggestions to fully track the new requirements of the Fostering Connections Act:

**13. Did the agency consider and document appropriateness and proximity of educational setting at the time of placement?**

- a. Yes**
- b. No**

- 14. Did the agency determine and document whether it was in the child’s best interest to remain in the same school, both at initial and any subsequent placement changes?**
- a. Yes**
  - b. No**
- 15. Is there a current plan for education stability, developed upon initial placement into care and updated at 6 month intervals thereafter?**
- a. Yes**
  - b. No**
- 16. How many different schools did the child attend during this reporting period (apart from normative school changes such as from Middle to High School)?**
- a. 1**
  - b. 2**
  - c. 3**
  - d. More than 3**

In conclusion, we cannot overstate our support for the inclusion of data elements that address a child’s well-being, specifically education-related elements. Collecting more comprehensive information on a child’s education experiences in a state’s foster care system will allow us to better serve all children in care and to meet the goals of safety, permanence and well-being.

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