

# Conference of Chief Justices Conference of State Court Administrators

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Ms. Jan Rothstein  
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Children's Bureau  
Administration on Children, Youth and Families  
Administration for Children and Families  
United States Department of Health and Human Services  
1250 Maryland Avenue, SW, 8<sup>th</sup> Floor  
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RE: Public Comment on Federal Monitoring of Child and Family Service Programs

Dear Ms. Rothstein:

On behalf of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), we commend you for seeking input to improve the process by which your agency evaluates state compliance with the federal requirements governing the title IV-B and IV-E programs. It has been our experience that the Child and Family Service Review (CFSR) process has contributed to increased attention to improved child welfare practice and increased focus on positive outcomes for children and families. The process has also encouraged states to be more strategic in the implementation of program initiatives and policies. While the process has proven beneficial, we believe that improvements could yield even better results. We asked our members to provide us with their comments and concerns and are pleased to provide the following comments for your consideration.

## **General Comments**

- Generally, the CFSR process has resulted in improvements to the child welfare system in each state because of the focus on key outcomes for children and family in the child welfare system. States have adopted strategies for integrating the CFSR model in their own continuous quality improvement (CQI) processes for monitoring systemic and case outcomes.
- As a requirement for receipt of federal Court Improvement Program (CIP) grant funds, the CIP Program Instructions require courts to have "meaningful, ongoing collaboration" with state agencies at all phases of the CFSR. While courts were more actively involved in the second round of CFSRs, more improvement is needed. In the second round of reviews, the Children's Bureau used retired judges to meet with each Chief Justice to

inform them of the CFSR process and solicit their support and involvement. This strategy strongly implied that the court systems did not collaborate with the child welfare agencies in the first round of reviews.

To the contrary, the experience in many states was that the state agency did not include the courts in the planning for on-site reviews and/or in the PIP development. The state agencies considered these discussions as "internal." For the third round of reviews, we offer the following specific recommendations:

- Rather than using the retired judges, have the person in the Regional Office who is responsible for coordinating the state's review be the person communicating directly and in-person with the state court administrator and the Court Improvement Program (CIP) director.
  - Correspondence about the review preparation, report findings, and PIP, should be sent by the Children's Bureau directly to the state court administrator and the CIP director.
  - State agencies should be required to involve the CIP director or a designated court representative in all phases of the CFSR process, including initial and ongoing planning meetings, state self-assessment, on-site review, final report review and response, and PIP development, monitoring, and completion.
  - We recommend that greater care be taken to coordinate court stakeholder focus groups through the CIP director to ensure timely notification and more effective participation of the court stakeholders.
  - A better mechanism is needed for finalizing the Program Improvement Plan (PIP) that ensures that the court system has input and ample time for comment. For the CIP strategic plans, the court system is required to obtain letters of support from the child welfare agency to demonstrate that the courts have collaborated. A similar expectation should be placed on the child welfare agency.
- While many benefits are realized from preparing for, conducting and receiving feedback and reports from the CFSR process it is a time consuming and often costly process for states in terms of staff and monetary resources. From the courts perspective, the resources to prepare for and participate in the week long review are often scarce and take staff and judges away from other important assignments. Some consideration might be given to addressing this issue by extending the length of the on-site reviews or organizing them in such a way as to allow for more flexibility to conduct the on-site reviews.
  - The scope of the review poses some concern as well. The focus groups and interviews may in some instances skew the entire review because of comments made by a few individuals. And in the same regard, important information may be missed merely because members of a particular stakeholder group were not available during the on-site review. The Children's Bureau might consider methods to get input from a broader cross section of stakeholders.
  - Similarly, the Children's Bureau's auditors should be required to validate information gathered in the stakeholder group sessions. Stakeholders have made statements that are not factual or are misleading. Auditors have included these statements in state reports as factual information without providing an opportunity to rebut the statements or otherwise provide corrected information.
  - The CFSR process could be improved by including court files in the case reviews. Once a dependency case is filed, the court assumes oversight responsibility for the entire case. Trying to measure how the child welfare agency is performing, and how important time frames are (or are not) met by looking only at the agency's files is not sufficient and nuances, if not outright important information, can be missed. Judicial reviewers have voiced frustration at doing case reviews without being able to see the actual court file and associated documents and docket entries.
  - Additionally, the Children's Bureau should consider expansion of the on-site review portion of the CFSR to include formal court site visits.

- There is a growing disconnect between the level of federal expectation and the reality of what states/counties can accomplish with the increasing complexities of families and diminished resources. The Children's Bureau should determine which outcome measures are essential and which are more permissive. States have reached the breaking point of the "do more with less" business model. Targeted federal incentive dollars may be necessary.
- The Children's Bureau should also consider including information regarding state disaster plans, especially the linkage between the plans of the child welfare agencies and the courts for foster care participants in the CFSR process.

**1. How could ACF best promote and measure continuous quality improvement in child welfare outcomes and the effective functioning of systems that promote positive outcomes for children and families?**

- The Children's Bureau should require states to have a CQI process with core elements that would apply for all states and be included or addressed in a CQI process. Other elements would be developed specifically for each state by that state. We would suggest no more than 5-6 core national elements be measured. These national core measurements should be developed with significant state agency, court, and stakeholder input. Federal reviewers should participate in the state CQI process and include the CQI findings in the monitoring process. The CQI should focus on the outcomes of safety, well-being, and permanence, not on just measuring activities.
- CQI may be best measured by allowing agencies and courts to use their own information to establish baselines for outcomes based on the particular states policies, laws and rules rather than arbitrary outcome measures assigned by the CFSR. CQI could then allow states to measure their progress on a more frequent basis, as opposed to every three years. The use of outcome measures could serve to inform practice on every level; administrative, managerial, and case worker.
- States should be required to create a mechanism to share CQI information with the court community and provide the court community with a meaningful opportunity for dialogue regarding the information. It would also helpful for the child welfare agency to provide the data broken down by judicial districts in addition to the agency regions.
- We suggest that the Children's Bureau consider simplifying the CFSR process. In addition to the main outcomes of safety, permanency, and well-being, there are 23 indicators for these outcome measures and 20 additional indicators in other categories. These indicators are sometimes cumbersome to read and implement. The indicators relating to courts are usually in the Case Review System category. Having a separate report of the court-related findings from this category would provide a better explanation of the findings to the courts.
- We recommend that the Children's Bureau undertake an effort to inter-correlate the existing indicators in order to determine which indicators are redundant. Such an effort could objectively define which measures provide very little new information, which would allow for the redundant indicators to be dropped without harming the quality of the study.
- Many states have very effective quality assurance (QA) or other oversight systems already in place. A diverse group of individuals review and analyze the CFSR outcomes. The findings of these systems should inform and be part of the CFSR process to ensure that all juvenile justice and child welfare systems are assessed, not just three counties in the current CFSR process. Utilizing these existing QA or oversight processes could relieve states of the burden of parts of the CFSR process. These state QA and oversight processes provide

mechanisms for states to capture information. A redesign of the CFSR process will allow states to provide information for the CFSR process that the state is already gathering through the QA or oversight system. Further involvement of the state QA and oversight systems in the CFSR process would be worth exploring and potentially could enhance the process.

**2. To what extent should data or measures from national child welfare databases be used in a Federal monitoring process and what measures are important for State/Tribal/local accountability?**

- There must be an accountability mechanism for ensuring state compliance with the federal program requirements. Use of national child welfare databases is a challenge because not all states use the same definitions for terms and there are significant differences in child welfare laws from state to state. If national databases are used, significant effort must be made to ensure the data is accurate and consistently provided by every state. It is incredibly important to have consistent definitions for data and a mechanism to ensure accuracy. This information should be augmented with information available from state/tribal/local systems.
- Some states have established targets for improvement and monitoring improvement through its QA or other oversight processes as explained above. Other stakeholders, including courts, are involved in these evaluation/review processes. Multidisciplinary training of stakeholders regarding these targets is crucial.
- Court representatives are critical stakeholders in the state child welfare agency's ability to achieve positive outcomes for children and families. Decisions and timeframes of the court directly affect the agency's ability to meet child welfare goals. If there are any areas determined to need improvement, the state agency is provided an opportunity to do so through a PIP. The PIP must be developed and implemented jointly by the State child welfare agency and the courts. We recommend that the Children's Bureau develop a mechanism to ensure greater input from the court community in development and monitoring of the PIP.

**3. What role should the child welfare case management information system or systems that States/Tribes/local agencies use for case management or quality assurance purposes play in a Federal monitoring process?**

- States that have shown overall improvement between one review and the next scheduled review should be awarded additional federal funding as an incentive for continued improvement. States that have not shown overall improvement, however, should not be penalized by taking away federal funding. The loss of the federal funding is likely to just further impede the states' ability to achieve improvements. The Children's Bureau should work with these states to ensure that the available federal funding is utilized by the states to address identified deficiencies and focused on strategies outlined in their PIPs.
- State/tribal/local case management information systems should be included in the overall monitoring process if the data is accurate and complete as stated above. These systems will most likely provide more detailed information regarding the outcomes for children and families in a particular area, which should assist states/tribes/local agencies to better understand their successes and barriers to success. As such, allowing and encouraging the use of this information could lead to better informed and more effective improvement strategies. This would also necessitate sufficient funding and technical assistance to develop and sustain local information systems.
- As mentioned previously, there is a threshold issue of data integrity with respect to the use of the child welfare agency case management systems as with all data systems. Information in the child welfare agency data systems about court events may be inaccurate or not recorded in a timely manner. Thus, drawing conclusion solely from child welfare agency data systems about such critical outcomes such as when a child entered care,

permanency reviews, and court dispositions and orders may not be accurate and may misrepresent the case circumstances.

- In addition, the CFSR uses the child welfare agency case management system narratives to gather case level information for the on-site review. The information is subjective in nature and may also contain inaccurate information.
- It may be useful to allow information about legal determinations to be verified with the court's information systems or files.

**4. What roles should State/Tribal/local child welfare agencies play in establishing targets for improvement and monitoring performance towards those targets? What role should other stakeholders, such as courts, clients and other child-serving agencies play?**

- The Children's Bureau and state entities must be role models for the child welfare system change to improve the outcomes for children and families. A process must be developed that has state/tribal/local child welfare agencies leading the establishment of targets for improvement and monitoring performance. In any change process, it is critical to have those responsible for implementing the change, highly involved with establishing the goals and activities towards that change. This process should include the voices of consumers, providers and certainly the courts in the planning and implementation of the system improvements.
- The role of the courts in the CFSR activities should be more clearly defined. The primary focus is currently on the child welfare agency. The courts tend to be included on a subjective as-needed basis. Typically, courts are asked to comment on the systemic factors addressed in the Statewide Assessment, participate in the review, and assist in the development of the PIP for those areas that are specifically court-related. Because of the immense amount of work required of the child welfare agency in preparation for the CFSR, the courts are sometimes an afterthought in the process. If courts are expected to be full partners, courts should be invited and allowed to participate in determining targets and outcome measures, in the development of the Statewide Assessment, in the on-site reviews, and the development of the entire PIP.

**5. In what ways should targets and performance goals be informed by and integrated with other Federal child welfare oversight efforts?**

- In addition to the CFSR, there are numerous federal reviews required by federal law and policy depending upon the particular program or funding stream (e.g., Title IV-E Reviews, IV-B Plans, Five-Year Child and Family Service Plans, CAPTA Plans, PIPs, etc.). There is overlap and duplication in these types of reviews and the CFSR. These multiple reviews and plans lead to confusion and frustration not only for the people responsible for implementing them, but for non-child welfare professionals and community members trying to understand the child welfare system. The Children's Bureau should examine how these reviews might be integrated into a single plan and review that occurs every five years, rather than the current differing frequencies.
- In addition, states must provide regular and specific progress updates on all of these plans. The child welfare agencies and those entities included in the various plans, spend an inordinate amount of time supplying "update" or "progress" information on a routine basis. Time spent updating the various plans or reporting on the outcomes of various plans takes away from the time available to actually carry out the plans. If the plans were combined, states could more easily report on progress and any corrective actions on a single prescribed frequency.

- The Children's Bureau should also reevaluate the level of detail of what is required to be reported (e.g. sign-in sheets for judges attending educational sessions, agendas of meetings, etc.). This level of detail doesn't provide information by which the Children's Bureau can assess the actual attainment of outcomes.
- The Children's Bureau should give consideration to how the CIP Plans and child agency plans can be better coordinated. This is critical for courts and agencies to work together administratively to have the best outcomes for children and families.

**6. What specific strategies, supports, incentives, or penalties are needed to ensure continued quality improvement and achievement of positive outcomes for children and families that are in substantial conformity with Federal child welfare laws?**

- **Strategies:** Several overarching strategies seem appropriate in this process to ensure quality services for children and families.
  - Any accountability process should **focus on "outcomes" rather than activities**. The focus should move from a "compliance based focus" to an "outcomes based focus". For example, evaluators need to know that behavior has changed as a result of counseling, not just that a parent attended five sessions.
  - Federal entities **need to role model the change they want to see happening at the state and local level**. Those federal entities that impact child welfare outcomes must collaborate and make abused/neglected children and their families a priority.
  - The Children's Bureau should encourage **flexible funding** to allow states the option of using funds in areas that show success. Currently, federal funds primarily pay for out-of-home placement. To the extent possible, safely keeping children within their own home and community is less traumatic for children and families and is fiscally prudent. The current funding strategy has localities that reduce out-of-home placements seeing a reduction in federal support. This is contrary to good practice and may lead to children re-entering care, when needed community supports are not available to families. States should be allowed to move placement funding to supportive community services.
  - Finally, the **focus of change should be limited to 2-3** measureable, meaningful priorities **at a time**. This should include items that have the best potential for immediate success (success breeds success and motivates), as well as, those items where success may come more slowly. Again, the focus should not be on the detailed enumeration of activities, but on the outcomes desired. It's not whether the state conducted three statewide training sessions, but whether the two they conducted resulted in the desired outcomes.
- **Supports:** Technical assistance, identified by states/tribes/local agencies is critical to any CQI process and achieving positive outcomes for children and families.
- **Incentives:** The Children's Bureau should consider incentives to states that meet targets and outcomes. State/tribes/local agencies should be provided incentives that promote success and enhance positive outcomes. Specifically, they should be allowed to keep critical federal funding and shift such into areas/practices that are demonstrating positive outcomes. States/tribes/local agencies should be allowed flexibility, with minimal federal oversight and an uncomplicated approval process, to allocate resources in a manner that promotes the federal child welfare laws.

- **Penalties:** In the future, the Children's Bureau should reconsider the use of monetary penalties. These penalties may result in reduction in monetary resources available to take corrective action indentified in the PIP. Rather than penalizing and removing precious funding from a struggling system, those systems should be able to retain resources and re-direct such. In these instances, federal oversight and a more comprehensive approval process may be needed. The courts are often called upon to take steps to improve outcomes within the PIP. While Title IV-B and Title IV-E reimbursed dollars are directed to the general funds in states, courts are usually a small portion of the total state budget and have an even smaller percentage of funds dedicated to child welfare cases. Some monetary incentive to the courts who take corrective action under the PIP should be considered.

7. **In light of the ability of Tribes to directly operate title IV-E programs through recent changes in the statute, in what ways, if any, would a Federal review process focus on services delivered to Indian children?**

- Indian children and families deserve the same level of quality child welfare services as any other child in our country. As such, tribes operating Title IV-E programs should be held to the same standards and same expectations as states.
- All children's cases and the services delivered to them should be subject to the federal review process regardless of tribal affiliation.
- The CFSR process should insure that cases subject to the Indian Child Welfare Act (ICWA) are evaluated as part of each state's review.

As you move forward, we are willing to work with you to improve the CFSR process and would welcome discussion with you and your staff. If we can provide additional information, please feel free to contact us or Kay Farley of the National Center for State Courts. Ms. Farley can be reached at (202) 684-2622 or [kfarley@ncsc.org](mailto:kfarley@ncsc.org).

Sincerely yours,



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c: Kay Farley