

June 13, 2018

Kathleen McHugh
U.S. Department of Health and Human Services
Administration for Children and Families
Director, Policy Division
330 C Street SW, Washington, DC 20024

**Re: RIN: 0970-AC72 Adoption and Foster Care Analysis and Reporting System;
Advance Notice of Proposed Rulemaking (3/15/2018)**

Dear Ms. McHugh,

On behalf of Juvenile Law Center please accept the following comments regarding the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and request comments regarding whether new data elements are overly burdensome. Juvenile Law Center requests that U.S. Department of Health and Human Services, Administration for Children and Families (“ACF”), Administration on Children Youth and Families (“ACYF”), Children’s Bureau (“Children’s Bureau”) maintain the current data elements in the December 14, 2016 AFCARS Final Rule (“Final Rule”), including those related to education, LGBTQ children and youth, and the Indian Child Welfare Act (ICWA). The data elements in the Final Rule previously went through a thorough notice and comment period, during which comments on the burden of data elements were addressed and the data elements adjusted as described in the Final Rule.

Juvenile Law Center is the first non-profit, public interest law firm for children in the country. Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, and consistent with children’s unique developmental characteristics. Juvenile Law Center is also a partner in the Legal Center for Foster Care and Education. Through the Legal Center, we advocate for better educational opportunities for youth in care in Pennsylvania and nationwide. The Legal Center has been instrumental in helping jurisdictions implement the educational requirements of the Fostering Connections to Success and Increasing Adoptions Act and the school stability requirements of the Every Student Succeeds Act.

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Juvenile Law Center submitted comments related to AFCARS in 2008, 2010, and 2015 in support of updating AFCARS requirements to better reflect new and changing federal laws and improve the quality of data collected about children in foster care. In April 2018, we submitted comments opposing the Proposed Delay of the AFCARS Final Rule.

A. The Data Elements in the Final Rule are Not Overly Burdensome and Have Already Been Streamlined through Numerous Comment Periods

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule represents a “streamlining” of the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any burden involved in implementing new data elements is outweighed by the benefit of better informed state and federal policy, resulting in improved outcomes for some of the most marginalized children in the child welfare system and reduced systemic costs.

Although educational information was not part of AFCARS prior to the 2016 Final Rule, several of the data elements are already being collected by states pursuant to the requirements of Fostering Connections and should not create an unnecessary burden for child welfare professionals. Where these data elements are not already being collected, data sharing between child welfare and education entities can minimize the burden of collecting this data. The educational data elements included in the Final Rule are unambiguous and straight-forward – qualitative review or case study is not required for accurate reporting.

Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) and changes in foster care services, educational stability, and oversight in the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L. 110-351), and the *Child and Family Services Improvement and Innovation Act* (P.L. 112-34). Critically, the Final Rule will also provide data to ensure implementation and oversight of the *Indian Child Welfare Act* (P.L. 95-608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in

implementing the recently passed *Family First Prevention Services Act* (“Family First,” P.L 115-123).

B. The 2016 Final Rule Represents Exemplary Changes that Are Long Overdue


The requirements within the 2016 Final Rule represent a shift away from “point-in-time” data towards longitudinal data systems which better reflect the experiences of children in foster care. Furthermore, the data collection requirements outlined within the 2016 Final Rule are necessary for the proper performance and function of child welfare agencies. Information collected can guide agencies to improve practice and programs to more effectively address families’ needs. With the new data elements, agencies will have more comprehensive information about system-involved children and families, such as the circumstances which bring families into contact with agencies and data elements on medical needs, living arrangements, older youth, and behavioral and mental health. Although there were many significant changes included in the 2016 Final Rule, three particular areas of importance are the changes to education, LGBTQ, and Indian Child Welfare Act (ICWA) data collection requirements. The inclusion of these data elements is long overdue and is crucial to improving the quality of collected child welfare data and our capacity to provide programs and services that match the needs of children and families.

- **Education:** The new education data elements in the 2016 Final Rule are basic, critically important, and not overly burdensome. Juvenile Law Center has submitted comments in response to numerous NPRMs, emphasizing the importance of including elements relating to education in AFCARS. Maintaining key educational data is essential to monitoring states’ compliance with the education requirements of the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections), which were further supported by the Every Student Succeeds Act (ESSA), and most importantly, to ensuring that the well-being needs of children in foster care are being met. Furthermore, research available on the educational performance of students in foster care overwhelmingly indicates that increased attention to educational issues is critical. Having this limited data in AFCARS is necessary to inform and improve states’ practice and policies and enable them to measure and track the education progress of children in care. As such, Juvenile Law Center enthusiastically supports retaining the four basic education-related data elements included in the 2016 Final Rule; this includes data pertaining to school enrollment, educational level, educational stability, and special education.

- **LGBTQ:** There is evidence that LGBTQ-identified youth are over-represented in the child welfare system, and that their specific needs are best served when child welfare agencies have information about which children fit into this category. Juvenile Law Center opposes the removal of data elements related to foster youth sexual orientation and gender identity and expression as this would negatively impact the safety, permanency, and well-being of LGBTQ children. Removing these data elements would also eliminate cost savings associated with finding affirming, supportive pre-adoptive families for an LGBTQ child – which would be impossible to do if the child’s sexual orientation was unknown. The Final Rule noted that this information should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality. HHS should maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression so that states and tribes can improve outcomes, identify and fund needed resources, and reduce disparities experienced by LGBTQ children and youth in foster care.
- **ICWA:** The data in the 2016 Final Rule is vital to the federal government, Congress, states, and tribes to effectively address the needs of American Indian and Alaska Native (AI/AN) children and families. Juvenile Law Center opposes any streamlining, modification, or elimination of the AFCARS data pertaining to the Indian Child Welfare Act (ICWA) for AI/AN children. AI/AN children have been overrepresented in state foster care systems for over two decades, going back to the initial implementation of the AFCARS system. Prior to the 2016 Final Rule AFCARS only asked questions related to whether a child in state care and custody was self-identified as AI/AN. This self-identification does not provide necessary information to understand whether a child has a political relationship with a federally recognized tribe as a citizen of that tribe and whether other federal law requirements under ICWA are being implemented, especially those related to the placement of the child in substitute care and whether the child’s tribe was engaged in supporting the child and family. As a result, AFCARS data has provided little help in understanding how to address chronic and persistent issues, such as foster care disproportionality, that are barriers to the well-being of AI/AN children and families—issues that not only affect the well-being of children, but also cost states and tribes considerable amounts of their finite resources. The AFCARS data elements for AI/AN children in the 2016 Final Rule have incredible potential to improve outcomes for this population, but only if the data elements are not heavily modified or eliminated.

For the reasons outlined above, Juvenile Law Center urges the U.S. Department of Health and Human Services, ACYF, ACF, Children's Bureau to retain all of the data elements in the 2016 AFCARS Final Rule, including the data elements related to education, LGBTQ children, and ICWA. We look forward to working with child welfare stakeholders to move forward with implementation of the Final Rule. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Susan Vivian Mangold".

Susan Vivian Mangold, Esq.
Executive Director
Juvenile Law Center