

May 20, 2011

Ms. Jan Rothstein
Division of Policy
Children's Bureau
Administration on Children, Youth and Families
Administration for Children and Families
1250 Maryland Avenue, SW, 8th Floor
Washington, DC 20024

RE: 45 CFR Parts 1355, 1356 and 1357
Federal Monitoring of Child and Family Services Programs; Request for Public Comment and
Consultation Meetings

Posted on: Federal eRulemaking Portal: <http://www.regulations.gov>
Email to CBComments@acf.hhs.gov

Subject Line: Comments on the CFSR *Federal Register* Notice/Vol. 76, No. 65/Tuesday, April
5, 2011/Proposed Rules

Dear Ms. Rothstein,

On behalf of the Barton Child Law and Policy Center at Emory University School of Law
(Barton Center), I write to submit the following comments on the Child and Family Services
Review (CFSR) in response to the request for public comment issued by the Administration for
Children and Families (ACF) on April 5, 2011.

The Barton Center was established in March 2000 to address the need in Georgia for an
organization dedicated to bringing about systemic policy and process changes for the benefit of
children in Georgia's child welfare system. We continue to operate today to promote and protect
the legal rights and interests of children who are involved with the juvenile court, child welfare,
and juvenile justice systems. The Center achieves its reform objectives in a number of ways
including research-based policy development, legislative advocacy and holistic legal
representation for individual clients.

We offer these comments from a state-level perspective through the lens of an independent child
advocacy entity. The aim of this Center is to serve as a resource to our public child welfare
agency, juvenile courts and policymakers. We attempt to proactively align our research, policy
focus, and legislative advocacy with the common goals of our child welfare system and its
stakeholders toward improved system functioning, strengthened administration of child welfare
services, and positive outcomes for children and families. Where required, however, we also
offer critique when policy, practice and case-level decisions depart from research-based
approaches.

History of Involvement with Georgia's CFSR

The Barton Center was a key partner of the Georgia Department of Human Services during Georgia's first and second round CFSR's. In 2001, the Barton Center hosted the Department's CFSR web site and actively participated in the review and the Program Improvement Plan (PIP) development and implementation. In 2007, the now-Director of the Center served as a reviewer during the on-site review portion, and several members of the Barton Center faculty and Advisory Committee contribute in formal and informal ways to ongoing program improvement efforts in the state. As such, the Barton Center considers itself a significant partner to our public child welfare agency and interested stakeholder in Georgia. We are engaged in the ongoing monitoring of and reporting on our child welfare system performance and outcomes and, in order to evaluate Georgia in context, we also closely follow the progress of other states with respect to their CFSR performance.

We attribute much of the progress of our state to the CFSR process and acknowledge the positive contribution the CFSR has made to improving outcomes for children and families in Georgia. Based on the improvements made thus far and the particularized demands of our system, we see potential in the CFSR for greater rigor and therefore, more meaningful oversight and leverage for system improvement. The CFSR has operated successfully in Georgia to impose a performance- and outcome-measurement framework on service delivery and to influence a workforce culture gradually to become more versatile with data and more collaborative with external partners. Moreover, the CFSR has honed the state's focus on quality assurance and continued quality improvement. Having achieved all of this for Georgia and in other states in its first two rounds, the CFSR process can be credited with catalyzing the maturation of state child welfare systems to greater levels of functional capacity and operational competency. Round three holds promise for the CFSR process to maintain those gains and, through refinement of the regulations, achieve greater precision.

Response to Specific Questions Posed

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

The specific recommendations set forth herein reference back to one salient tenet, which is that the CFSR process should be structured to be optimally informative and minimally redundant for states. Federal reviews and reporting schedules should be aligned to maximize efficiencies, maintain a consistent focus across targets, and reduce resource burdens created through duplication. Technical assistance should be re-engineered to promote evidence-based strategies and peer-to-peer learning across states. And finally, the results of the reviews for all states should be publicly reported and maintained in a consistent and accessible format. The result will be a fully transparent process with heightened accountability and promotion of a resource to enable helpful comparisons of strategies across states.

Streamline Federal Review and Reporting Processes

As presently structured the CFSR is a labor-intensive two-stage process involving a comprehensive statewide assessment followed by an on-site review, all of which is subsequently followed by a presumed corrective action planning process involving regular federal monitoring

and technical assistance. The experience of engagement with the second round of the CFSR in Georgia has suggested an all-consuming set of activities and expectations. Consequently, as other federal reviews are required of the state, sincere attempts to integrate planning documents and implement practices have felt largely unsatisfying.

The current CFSR and its PIP processes proceed along a timeline that is different from the Child and Family Service Plan (CFSP) cycle, resulting in a missed opportunity to optimally align strategic planning and implementation. As a result, in Georgia, child welfare system administrators, practitioners and stakeholders are relied upon to engage in seemingly disjointed planning and reporting activities, impairing collaborations. Additional burdens are created through inconvenient scheduling, inefficiencies of time and duplicative efforts. Ideally, the state's child welfare agency and system stakeholders would routinely participate in an ongoing cycle of assessment, planning, implementation, review, reporting and refinement. Resources could be utilized more efficiently in a process that allows for increasingly deeper knowledge of the state's system, policies and practices. To that end, the CFSR and PIP should be integrated into the state's CFSP.

The comments submitted by the APHSA propose with greater specificity the manner and timing with which the CFSR and the APSR could be integrated. We support those recommendations.

Reimagine the CFSR

The CFSR process itself should be redesigned as an intentional technical assistance mechanism through which the federal government can reinforce the goals of assuring child safety and permanency and enhancing the well-being of children and their families. Rather than an arduous program review with associated penalty scheme, the Round 3 CFSR should be conceived as a routine exercise in which the federal role would be to formulate a high-level profile of each state's performance as evaluated against national standards of performance. The federal-state collaboration would produce a targeted PIP, for which ACF would provide relevant and useful technical assistance.

In our experience, the development and implementation of the state improvement plans are where meaningful progress in practice and policy occurs. Thus, we recommend that the regulations be modified in such a way so as to presume the need for improvement planning in every state. Rather than emphasizing the potentiality of a state achieving substantial conformity on the CFSR measures,¹ the review process should strategically drive toward the Program Improvement Plan (PIP) as an end goal, using the preceding assessment and review components to identify the PIP target areas. Each state's PIP would be customized and limited, focusing only on a few selected areas to maximize focus and impact. Consultative assistance would be made available to states to ensure that outcomes are linked to evidence-based strategies for improvement or well-supported innovations.

Reconfigure Technical Assistance

Further, federal technical assistance should facilitate peer-to-peer learning across states as a primary strategy. Presently, the technical assistance varies in quality and helpfulness. States

¹ To the best of the collective knowledge of the Barton Center, no state has achieved substantial conformity across all measures such that a resultant PIP was not required.

receive different and inconsistent information, benefit from varied levels of support and engagement, and seemingly are held to different standards depending on their regional representatives. In addition, state practice is highly nuanced. We support the continued use of federal standards to move states to a set of shared outcomes and expected performance but encourage the process to recognize the variation in data definitions, case mix, state laws, and administrative governance. A technical assistance scheme that promotes lateral, state-to-state comparisons would allow states to learn more effectively what strategies are linked to improved outcomes and how best to implement those strategies. Any funding withheld from a state for its subsequent failure to satisfactorily complete a PIP, if not reinvested in child welfare services within that state, should be used to support this kind of targeted assistance.

Publicly Share State Profiles and PIP Strategies

All stages of the process, to include the Statewide Assessment and onsite review as well as the Program Improvement Plan and ensuing progress reports, should be made publicly available *for each state*. Advocacy organizations like the Barton Center need regular and immediate access to information about our own state's performance as well as that of other states for helpful comparison to inform the alignment of resources, leverage strategic engagement of partners, and assign policy and advocacy priorities. The National Resource Centers should coordinate efforts with the public child welfare agencies, outside organizations and private foundations to manage information-sharing.

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?*

Use of National Data

The Barton Center supports the continued use of national data for context against which to evaluate state performance, with some additional refinement discussed herein. Child welfare practice consists of more than system administration and individual case judgment; all aspects of child welfare policy and practice implicate the rights of families and children. Accordingly, the framework of applicable federal and state laws creates certain expectations of timeliness, fairness and consistency of process. Additionally, substantive law provides the principles and, increasingly, dictates the priority of outcomes that form the basis for child welfare system operations. Clear examples include reasonable efforts requirements, the hierarchy of legal dispositions, and certain timelines for achieving permanency. This framework is consistent across all states. Therefore, national measures are necessary to a federal monitoring process, at a minimum with respect to those practice considerations and outcomes connected to specific legal requirements.

Refinement of Measures

Having established the need for national measures, we respectfully offer recommendations for further refinement of the current CFSR measures. Georgia's experience with the CFSR (particularly round 2) has elucidated the need to redefine certain measures. The way the current measures are applied creates inconsistent policies and practices as outcomes are being achieved simultaneously. For example, Georgia has struggled with its placement stability measure, which has shown a marked decline since 2004. At the individual case level, we have identified

powerful anecdotal evidence that children are being moved progressively toward permanency. That is, the decrease in placement “stability” as measured by that CFSR item may be attributable to a positive social work direction such as transitioning a youth from a residential setting into a community-based foster home. An alternative theory “on the ground” is that improved data integrity explains the apparent decline in performance on the permanency stability composite. Perhaps coincidentally, as Georgia’s statewide child welfare information system became better able to track placement moves, the state’s performance deteriorated. An incentive structure that tolerates an effect in which a decline in tracking of placement moves may improve performance on the placement stability composite, and conversely, improved tracking of placement moves may decrease performance on the placement stability composite seems critically flawed. Placement stability is one helpful illustration, and we respectfully suggest that all data measures should be defined in such a way that states can easily understand their interconnectedness and how one practice area impacts another positively or negatively. Without such clarity around the import of a data element, measure or composite, analysis will not readily dictate desired and needed change.

Additionally, we submit the need for timeliness to be measured consistently regardless of the permanency outcome being reviewed. Presently, the CFSR permanency outcomes for reunification and adoption are measured for achievement at 12 and 24 months, respectively. Though the federal law (and conforming state law) prescribes a preferential order of permanency options, the law does not differentiate timeliness for achieving permanency across those options. Indeed, federal law requires that each state’s “case review system” include procedural protections to ensure that a permanency hearing is held for each child in foster care no later than 12 months after the child enters foster care and every 12 months thereafter.² The permanency hearing is conducted for the purpose of determining the permanency plan for the child, including whether and when “the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement”³ This provision is reasonably interpreted to mean that all permanency options are weighted equally, at least in terms of the time allotted for the state to achieve a child’s permanency goal. Moreover, the timely achievement of any permanency goal is a valuable data point to collect in evaluation of a state’s performance. We therefore propose that each positive permanency outcome be measured consistently across standard intervals of three, six, 12, and 24 months for all permanency outcomes. On a more limited basis, the measure could be extended to include an interval at 48 months if that information is determined to be needed or helpful.

Furthermore, as noted above, child welfare policy as expressed through the law identifies a clear preference for reunification and, when reunification is not safe or appropriate in light of an individual child and family’s circumstances, establishes adoption followed by permanent guardianship and relative placement as the preferred order of “positive permanency” outcomes. Thus, the Barton Center recommends weighing the permanency options differently, according to

² See 42 U.S.C. §675(5)(c) (2011).

³ *Id.*

their preferred order among dispositional alternatives. So combining these recommendations, we suggest that the coefficients for the composites should reflect both the timeliness with which the agency achieved the permanency goal (i.e., 3, 6, 12, 24, 48 months) and the qualitative value of the permanency type that is achieved. For example, achieving reunification or adoption in 12 months should be weighted more heavily than the weight given to guardianship achieved within 12 months because the former is a preferred legal permanency. As a corollary, APPLA outcomes should result in a discounted “score” as that disposition reflects a failure of the system to achieve meaningful permanency for a youth.

Additional Measures

Due Process Protections

To the end of respecting the due process rights implicated by child welfare practice, the Barton Center encourages ACF to consider the addition of new due process protection measures to the CFSR outcome framework. The constitutionally-protected liberty interests of the child and the parents to family integrity are directly and dramatically impacted by the child protection decision to remove a child from parental custody into foster care. As soon as that intervention is undertaken, the substantive and procedural due process rights of the parents and the child hang in the balance. Federal and state constitutional, statutory, and decisional law speak to that balance and consequently, the federal child welfare regulatory scheme should be leveraged to monitor state performance. For example, due process could be measured in part by the percentage of permanency hearings in which the parent(s) and the child were each represented by their own attorney. Additional process measures should include the timeliness of conducting the various statutorily prescribed hearings, such as the percentage of cases in which a permanency hearing was held within 12 months. Incorporating these judicial process measures accomplishes the dual goals of ensuring due process protections for the parties and more formally engaging the courts as participatory stakeholders in the child welfare system and the CFSR process.

Fostering Connections

Additionally, we urge ACF to incorporate new and/or expand existing outcome measures to incorporate expressly the statutory provisions of the Fostering Connections to Success and Increasing Adoptions Act, particularly around child well-being. For example, specific practices to ensure educational stability should be outlined and evaluated as part of Well-Being Outcome 2, including the agency’s efforts to consider a placement in close proximity to the child’s school, maintain the child in his school of origin if in his best interest and/or ensure immediate enrollment if a change in school is necessary. Additionally, through the CFSR and its PIP, states should be supported in their efforts to share data to better coordinate educational and healthcare services across systems, as promoted by the Fostering Connections Act.

Alternative Response

And finally, we recommend inclusion of outcome measures keyed to alternative response practices and policies. In recognition of the high utilization of front-end practices, the Barton Center respectfully recommends incorporating into the CFSR measures a perspective on the state’s performance at safely preventing unnecessary removals into foster care. The CFSR as currently structured distorts the picture of child welfare by focusing almost exclusively on foster care notwithstanding the reality that four of every 5 child victims are not removed to foster care. Georgia’s foster care population has witnessed a precipitous decline from approximately 15,000

children in care in 2004 to approximately 7,300 in 2010. This safe reduction is largely attributable to the deployment of the front-end practice of “diversion,” which approximates a track in a more fully formed differential response model of practice by calling for children to be maintained in their homes with supports and services provided through community resources. Thus, non-foster care safety practices represent the bulk of child welfare service provision in Georgia. If it is to continue as an evaluation of state child welfare system performance and outcomes, the CFSR tool should be modified to reflect this reality and the trend among states to invest their resources in keeping children from entering traditional foster care. Moreover, the recently published National Incidence Study (NIS-4) reminds us that our state systems fail to detect the vast majority of child abuse.⁴ That study is congressionally mandated by the Keeping Children and Families Safe Act of 2003 (Public Law 108-36), and its finding should be contemplated in the design of the CFSR.

- 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 plan in an Federal monitoring process?*

The Barton Center does not presume to have sufficient experience or expertise to fully address this administrative question. However, we can acknowledge the state-level success of the CFSR at promoting enhancement to Georgia’s statewide child welfare information system and quality assurance. Georgia’s child welfare agency adopted a version of the CFSR on-site review tool to use in routine county-level performance reviews and evaluations. Over time, that tool became more robust and exists now as a locally-enhanced version of the CFSR. Quality assurance has become a routine exercise within the agency’s operations. That progress is a credit to the value of the CFSR, but as the CFSR continues to evolve, we sense that child welfare case management information systems could be relied upon more heavily to provide the information sought through the CFSR process. In doing so, the federal government shows its interest and willingness to transition responsibility for performance to the states.

- 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?*

In response to this question we refer back to the comments and insights offered throughout these comments that are relevant to this question. We particularly note the need to formalize the role of the courts as participants in the CFSR process and as shared “owners” of foster care outcomes. That could be achieved through the explicit incorporation of due process measures addressing legal representation and timeliness of proceedings.

The Barton Center also stresses as important the need for any federally-defined role of the state agency in establishing improvement targets and ongoing monitoring to be flexible enough to allow the states to innovate and take risks to achieve individually-suited best outcomes for children and families. As safe reduction efforts take hold, the foster care population that remains

⁴ Fourth National Incidence Study of Child Abuse and Neglect, available at http://www.acf.hhs.gov/programs/opre/abuse_neglect/natl_incid/index.html

fits a challenging profile characterized by older youth with longer histories of trauma, separation from family, and disconnect from community as well as poorer health and other well-being outcomes. State child welfare agencies and system stakeholders need to be empowered, even incentivized, to think creatively and take bold action to solve for the problems and challenges presented by these youth. The CFSR is an opportunity to leverage those strategies, support them, and facilitate shared learning across states.

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

In response to this question, we refer back to the central tenet for these comments, which is that the CFSR process should be structured to be optimally informative and minimally redundant for states. Federal reviews and reporting schedules should be aligned to maximize efficiencies, maintain a consistent focus on targets, and reduce resource burdens created through duplication.

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 law?*

The Barton Center offers the opinion that the existing CFSR penalty scheme, while effective at obtaining short-term compliance, is ineffective at ensuring sustained positive change. The hyper-focus on avoiding penalties is a distraction to strategic planning and visionary action. It also creates unhelpful political pressure, particularly in times of economic challenge. Ideally, the threat of penalties could be leveraged to secure additional political and funding support, but that has not necessarily been the experience in Georgia, where instead, the hardened focus on achieving substantial conformity and/or successfully fulfilling the PIP have generated resentment and eroded public confidence in the child welfare system. The comments offered by the APHSA in response to this question further capture the reasons why a rigid penalty scheme does not equate to meaningful accountability. By way of a specific strategy to ensure continued quality improvement, we propose using the state profile generated through the CFSR to inform a state's resource planning. A rigorous data profile could provide useful context for resource decisions, including where to invest and re-invest federal and state funds. In this same vein, we refer back to our recommendations regarding redesigning the federal technical assistance, outlined above.

We further suggest revising the federal regulations to ensure that, when withholding is warranted, it is coextensive in time with the period during which the state failed to pursue, in good faith, corrective action. The amount of funds withheld should be allowed to be re-invested in the state with a directed focus on the outcome needing improvement and the strategies to make progress.

And finally, we recommend that penalties be used as an inverse incentive scheme and apportioned to account for the degree of state action involved in the ultimate success or failure of the outcome being measured. Specifically we propose that the penalties are scaled to proportionally account for the human cost of ineffective or inadequate state performance in the areas measured by permanency composites two and three. Taken together, these composites speak to the phenomenon of youth aging-out without a legal relationship to a caring adult. That

outcome represents the ultimate failure of a state child welfare system. As such, it should be discouraged through every angle of policy and practice. The withholding and penalty scheme component of the CFSR should be used to discourage states from taking actions that will lead to this result if the CFSR process intends to serve as a tool for meaningful performance evaluation.

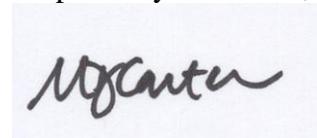
7. *In light of the ability of Tribes to directly operate title IV-E? programs through recent changes in the statute, in what ways, if any, should a Federal review process focus on services delivered to Indian children?*

No federally-recognized tribes reside in Georgia and therefore, the Barton Center's does not have deep knowledge about tribal functioning. We do promote the necessity of the CFSR to incorporate measures that monitor state compliance with the Indian Child Welfare Act (ICWA) and outcomes for tribal children. Those measures should include the ability of the state to provide culturally-appropriate services that are responsive to the unique needs of tribal families and children and to observe the special legal requirements applicable in the Native American child protection context.

Conclusion

In closing, we thank you for the opportunity to provide our comments on proposed improvements to the CFSR and PIP processes. We believe the Barton Center is positioned to offer unique insights from the state level on the experience of the CFSR and PIP to date from the perspective of an independent child advocacy organization. We submit these comments in an effort to support the strengthening of the CFSR as a tool that has already proven its value in Georgia. With further refinement, the CFSR will remain a relevant exercise for child welfare agencies and stakeholders with results that will be instructive to improvement and reform efforts.

Respectfully submitted,



Melissa D. Carter
Director
Barton Child Law & Policy Center
Emory University School of Law