

Response to Request for Public Comments on Proposed Rule by the Children and Families Administration on the Adoption and Foster Care Analysis and Reporting System (AFCARS)

Submitted by

The American Bar Association

April 10, 2015

Pursuant to the notice published in the Federal Register on February 9, 2015 (80 Fed. Reg. 26), the American Bar Association submits these comments on the proposed rule amending the Adoption and Foster Care Analysis and Reporting System (AFCARS).

Introduction: Importance of Collecting Education Information

In 2008 and 2010, the American Bar Association submitted comments explaining the importance of including elements relating to education in AFCARS and suggesting specific ways of measuring this important “well-being” factor. 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) and – even more important – to ensure that the educational needs of children in foster care are being met.

The ABA enthusiastically supports adding the proposed education-related data elements to AFCARS. This marks tremendous progress, and it will surely lead to improved data that can be used to inform and improve states’ practice and policies and enable them to measure and track the educational progress of children in care.

Several of these data elements are already being collected in many jurisdictions 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 any additional problems with collecting this data. Furthermore, research available on the educational performance of students in foster care overwhelmingly indicates that increased attention to this issue is critical.

In addition, based on our years of experience advocating for improved educational opportunities for children in care and interacting with advocates, educators, and child welfare professionals, we recommend some changes to the proposed rule that we believe will substantially enhance the quality of information collected and analyzed and will enable child welfare agencies to support improved educational outcomes for children in foster care.

Specific comments related to each education data element follow:

I. School Enrollment

The ABA recommends 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. This change also aligns AFCARS with the requirements of the Fostering Connections Act.

We recommend three changes to this proposed element to make the data gathered as meaningful as possible:

- **Include early childhood options:** We recommend including enrollment in “early childhood education.” “Early childhood education” should be 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 (IDEA). While we recognize that young children below compulsory school-age are not legally required to attend school, participation in an early learning program is even more important for children in foster care since children in care disproportionately have developmental delays and other learning challenges that can undermine school success. For this reason, programs like Head Start are required to prioritize the admission of children in foster care and tracking these children’s participation in early learning programs is essential.
- **Capture part-time higher education enrollment:** We suggest the information gathered by this data point not be limited to only “full time” enrollment. We know that for financial and other reasons, many older youth attend post-secondary schools part-time. Whether full- or part-time, post-secondary school attendance is something to encourage and track.
- **Clarify the term “enrolled”:** We recommend clarifying that the term “enrolled” means enrollment *and attendance* in that program.

As a final note, these data will identify those students not enrolled during the 6-month AFCARS reporting period, but not those who are not enrolled earlier or later in the school year. It will also not address *why* they are not enrolled (*e.g.*, did they drop out, were they suspended or expelled, etc.). We suggest capturing and maintaining longitudinal data regarding the reasons the child is not enrolled.

- **SPECIFIC RECOMMENDATIONS** (in bold):

School enrollment

Early Childhood Education

Elementary

Secondary

Part-time Post-secondary education or training

Full-time Post-secondary education or training

Part-time college or university

Full-time college or university

Not school-age/**not enrolled in Early Childhood Education**

Not enrolled

II. Educational Level

We strongly support the inclusion of information about the last completed educational level. As a threshold issue, we suggest renaming this element “Completed Educational Level” for clarity. This element complements the School Enrollment section and many of the comments we made to that section apply here:

- **Early Education:** Although children under school age constitute one-third of the children in care, all too often the education needs of young children in care are not addressed. Access to early learning programs is linked to ultimate education success for all children and is especially important for these educationally vulnerable youth. Tracking the access all young children in care have to these programs (both those with and without developmental delays or disabilities) is critically important.
- **Post-secondary Education:** Like other students, many youth in care want and need access to a post-secondary education. However, research shows that they realize this dream less frequently than the general population and that those who enroll are less likely to graduate. To achieve their full potential, older youth in care and those exiting care need support and opportunities to succeed in post-secondary programs. There are a wide variety of post-secondary opportunities and options available to students, and to gather the most useful data about trends it is important to capture some additional details about the student’s post-secondary status.

As currently proposed, a student who has successfully completed 3½ years at an institution of higher education would still need to list “12th grade” as highest grade completed. We suggest capturing degrees and certificates earned on route to the completion of a 4 year degree or as an alternative to a high school diploma. We have added options to this data element that include diploma and high school equivalency (“GED”) earned as well as 2- or 4-year post-secondary degrees completed.

We also recommend that definitions of “college and university” include community college and definitions of “post-secondary education and training programs” include vocational and training programs that are *not* part of a 2- or 4-year college or university offering.

- **GED or High School Equivalency Completion:** Finally, it is important to note whether a student has earned a GED or other high school equivalency degree. While this would replace the last grade completed, it is more instructive to know that the child is a GED recipient rather than know what grade was last completed.
- SPECIFIC RECOMMENDATIONS (in bold):

Completed Educational level

Not school-age/**no early childhood education**

Early Head Start or Head Start

IDEA services or program through Part C or Part B

Pre-K

Kindergarten

1st grade

2nd grade

3rd grade

4th grade

5th grade

6th grade

7th grade

8th grade

9th grade

10th grade

11th grade

12th grade

GED or other high school equivalency degree

Post-secondary education or training **program - one year**

Post-secondary education or training program - 2 or more years

Post-secondary education or training program/diploma or certificate

College or university- one year

College or university- 2 year diploma or degree

College or university- 2 or more years

College or university- 4 year diploma or degree

III. Educational Stability

Fostering Connections mandates educational stability. Child welfare agencies must take steps to place children close to the schools they have been attending and to plan for and collaborate with education agencies to ensure that children remain in the same school when their living situation changes unless a school change is in the child's best interest. Since the adoption of Fostering Connections in 2008, many state and county agencies have changed policy and practice to support school stability, but without data, it is difficult to measure progress and trends. A data element relating to school stability should be included.

We applaud the proposed changes to allow longitudinal information about specific children to be tracked and maintained over time. This will be critical to determining the overall school stability of children during their entire stay in care.

However, because the data will be collected every six months there is a high chance of underreporting transitions. For example, there may be multiple school moves within a six-month period, but only one school change would be captured. We recommend including the ability to complete the school stability question more than one time during a six-month period if more than one school change has occurred during that six-month period or to include a way to capture all school moves in every six-month report.

We also suggest adding some additional options within the existing data element to get a better understanding of why – despite Fostering Connections – children are changing schools. Overall, the goal is to differentiate between school moves that are in the child’s best interest (such as moving to a relative’s home in another state) and those that are not (such as a lack of living placement options in the child’s school district).

Finally, for ease of reporting, and to promote accuracy, we suggest rewording the question from “Educational Stability” to “School Change.” That is, if there was a change in school during the six-month period the answer would be “Yes” and then the options could be completed for all that apply. Additionally, to prevent confusion around non-normative school changes (*i.e.* from Elementary to Middle School), we suggest adding that as an option.

- **SPECIFIC RECOMMENDATIONS (in bold):**

~~Educational Stability~~ **School Change**

Yes

No

— **If yes, number of non-normative school changes since last report**

1

2

3

More than 3

— **Normative School Change**

Applies

Does not apply

— ~~Proximity~~ **Distance between School and Living Placement**

Applies

Does not apply

— **Lack of Living Placement Options Near School**

Applies

Does not apply

— **Transportation unavailable**

Applies

Does not apply

- District/zoning rules
 - Applies
 - Does not apply
- Residential facility
 - Applies
 - Does not apply
- Services/programs
 - Applies
 - Does not apply
- Child request
 - Applies
 - Does not apply
- Parent/Legal Guardian/**other authorized education decision maker** request
 - Applies
 - Does not apply
- **School Placement change supports child’s permanency plan**
 - Applies**
 - Does not apply**
- **School discipline transfer**
 - Applies**
 - Does not apply**
- Other
 - Applies
 - Does not apply

IV. Special Education

We recognize the need for this data element and support its inclusion. Studies indicate that 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 fewer than 13% of school aged children). But we currently have no reliable national data on the exact number of students in care who qualify for services under the IDEA. Inclusion of this data element would fill this gap. These data are important to both child welfare and education agencies and would focus state and local agencies’ attention on effective delivery of services to these children.

We suggest two minor edits to the options available under this data element:

- We believe the IEP and IFSP designations can be combined – only children from birth through age 3 will have IFSPs and the age of the child will indicate which type of plan is in place. While some 3-year olds may have an IFSP or an IEP, we believe that distinction is not critical for the basic information captured here.
- We suggest adding an option for identifying children who are receiving services and accommodations in the school setting in compliance with

Section 504 of the Rehabilitation Act. Some students who do not qualify for IDEA services do qualify for supports through Section 504. This is an often-missed area of educational support for which data is largely unavailable.

- **SPECIFIC RECOMMENDATIONS** (in bold):

Special education/**educational disability**

IEP/IFSP

~~IFSP~~

Section 504 Plan

Not applicable

V. **IDEA Qualifying Disability**

We applaud the inclusion of many types of disabilities under the “IDEA Qualifying Disability” but recommend fully aligning the choices with the IDEA as set out in 34 CFR 300.8(c). Specifically, we would add:

- **Deaf-blindness** defined as “concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.” 34 CFR 300.8(c)(2);
- **Deafness** defined as “a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.” 34 CFR 300.8(c)(3) and
- **Multiple disabilities** defined as “concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments” and does not include deaf-blindness. 34 CFR 300.8(c)(8).

We understand that two categories were blended in the AFCARS options (hearing impairment and deafness) and two were omitted (deaf-blindness and multiple disabilities), but propose that using the same federal impairment categories will be the easiest way to ensure accurate data collection.

VI. **Additional Suggestions**

We realize the importance of including a limited number of key data points relating to educational achievement and success and believe the above proposed data elements include the most important and critical data to capture. Two additional suggestions for consideration include the following:

- **Education ID number (unique student ID):** If child welfare agencies routinely collected children’s Education ID number it would be much easier for states to share information between education and child welfare agencies on the state and local levels and for those agencies to develop effective policies and procedures. It would also help child welfare agencies ensure effective education programs for children in their care. Access to data via a Student ID number (which is included in a child’s education records) provides an incredibly rich and detailed set of education information about each child, and, in some state systems, it is also linked to longitudinal workforce data. Accordingly, we strongly suggest that child welfare agencies be required to maintain the Student ID number for each child in foster care (see suggestion below) or, in the alternative, that the U.S. Department of Health and Human Services provides specific guidance to states encouraging this practice.

Is the unique student identification number maintained in the child’s case plan?

- Yes
- No

- **Educational Decisionmaker:** It is not always clear who has the legal authority to make educational decisions for children in care. AFCARS should include a data element clarifying who can make general and/or special education decisions for the child. Finally, because the decisionmaker may be a different individual depending on whether the decision is related to general or special education decisionmaking, a data element could separate this into more than one question.

Is the person authorized to make general and/or special education decisions for the child identified in writing in the case plan?

- Yes
- No

- **School Placement Type:** We support the importance of including as a new AFCARS data element the type of living arrangement for each child in care. We believe an equally important data element is the type of school the child is attending. Ensuring that children and youth in foster care have access to regular public schools rather than more limited or restrictive educational programs can be critical to school success. Here is a proposal to capture this data element:

Type of school child attends:

- Regular public or private school
- Special education school

- **Residential (on-grounds) school**
- **Partial hospitalization program**
- **Alternative Disciplinary school setting**
- **Juvenile Detention placement**
- **Home School**
- **Other**

VII. Conclusion

We cannot overstate our support for the inclusion of data elements related to education. 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. For further information, please contact: Kathleen McNaught, Assistant Director, American Bar Association Center on Children and the Law, kathleen.mcnaught@americanbar.org.
