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Blair L. Sadler



Children's Advocacy Institute



University of San Diego School of Law
5998 Alcalá Park / San Diego, CA 92110
(619) 260-4806 / (619) 260-4753 (Fax)

717 K Street, Suite 509
Sacramento, CA 95814
(916) 444-3875 / (916) 444-6611 (Fax)

Reply to: San Diego Sacramento

www.caichildlaw.org

May 20, 2011

Jan Rothstein
Division of Policy
Children's Bureau, Administration on Children, Youth and Families
Administration for Children and Families
Department of Health and Human Services
1250 Maryland Avenue, SW., 8th Floor
Washington, DC 20024
CBComments@acf.hhs.gov

**SUBMITTED THIS DATE
VIA EMAIL**

Re: Response to Request for Public Comment
Federal Monitoring of Child and Family Services Programs
45 CFR Parts 1355, 1356 and 1357

Ms. Rothstein –

The Children's Advocacy Institute (CAI), founded in 1989 as part of the University of San Diego School of Law, seeks to improve the health, safety, and well-being of children. CAI is an academic center and advocacy group representing the interests of California's children. We are directly involved in the juvenile court system, operating a law school clinic in which our students assist in the representation of minors in dependency and delinquency court proceedings in San Diego County, and represent the interests of children in Sacramento and Washington, D.C. We have a keen interest in assuring that states, and California in particular, appropriately utilize Title IV-B and IV-E funds. We are currently involved in federal litigation to ensure appropriate implementation of the Child Welfare Act in California's foster care maintenance payments provided to foster family homes (*California State Foster Parent Association, et. al. v. Wagner, et.al.*).

We appreciate the current opportunity to comment on the federal monitoring of Child and Family Services Programs and will be focusing our comments on responding to questions 1, 4 & 6.

Question 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?

As outlined in 45 CFR § 1355.34, when determining a State's substantial conformity with title IV-B and IV-E State Plan requirements, subdivisions (a) (1) – (3) indicate that ACF will be focusing on the State's ability to meet various data indicators associated with specific outcomes for children and families. While, certainly, the effective functioning of State systems should be measured via the outcomes produced, limiting compliance evaluation to only these outcome measures alone is not sufficient and misses a clear opportunity. One reason the focus solely on outcomes alone is ill advised is that there are, naturally, random fluctuations in the number and kinds of children coming into the child welfare system. These fluctuations will have an impact on outcomes without implying anything good or bad about the quality of state programs. Indeed, an emphasis on outcomes could entirely excuse

the state from achieving compliance with Title IV-B and IV-E mandates while a state that is following federal law to the letter could see outcomes decline.

Some Title IV-B and IV-E requirements are so clear and direct that compliance with these requirements can be evaluated without resorting to looking at family outcomes. Consider foster care maintenance payments that must cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family members. (42 U.S.C.S. § 675 (4)(A), 45 CFR § 1355.20 (a).) In a federal lawsuit we filed, the District Court found that for nearly thirty years (since California's foster care rate schedule was originally enacted), California has paid foster care maintenance payments that were not "in any way based on the cost categories in...the Child Welfare Act." (*California State Foster Parent Ass'n v. Wagner*, 2008 U.S. Dist. LEXIS 88798 at *20.) Even the most cursory scrutiny of the rates and how California set them (arbitrarily, literally without any cost analysis) would have revealed that they were violating federal law and that for nearly three decades, the Federal Government has continued to pay, and California has continued to receive, Title IV-E funding. During this time, the number of foster parents plummeted throughout the State, with proportionally more children being placed by necessity in group institutions.

Thus, by focusing strictly on outcome measures to the exclusion of focusing on state compliance with existing federal mandates, ACF fails in their responsibility both to ensure in the continuous quality improvement in the delivery of services to abused and neglected children and to ensure that federal tax dollars are spent for their intended aims – aims that were vetted through the legislative process and have been specifically delineated in Title IV-B and IV-E mandates. Therefore, CAI recommends that, in addition to evaluating outcome measures, ACF work with stakeholders to identify statute-based compliance components that can be directly measured and that ACF integrate these components into the criteria that are to be satisfied when determining a State's substantial conformity with Title IV-B and IV-E requirements pursuant to 45 CFR § 1355.34.

While the Child and Family Service Review (CFSR) process should look beyond outcome measures to assist state, tribal and local governments in addressing the goal of achieving continuous quality improvement in the delivery of child welfare services, we do not, here, mean to diminish the importance of monitoring outcomes. In fact, CAI suggests that the outcomes measured can be improved.

To more accurately measure appropriate outcomes, the analysis of data collected should encompass the full scope of child welfare to account for services at both the front and back ends of the system. CAI joins the National Child Abuse Coalition in suggesting that the CFSR process incorporate information from other national databases to capture the full picture of child welfare services. The CFSRs should incorporate practices and policies directed at state child protective services found in statutory authorities other than Title IV, namely those policies and procedures identified in the Child Abuse Prevention and Treatment Act (CAPTA) grants to states (42 U.S.C. § 5106a) and community-based child abuse prevention grants (42 U.S.C. § 5116).

CAI suggests at least three additional areas that should be evaluated and measured. Information collected annually through the National Child Abuse and Neglect Data System (NCANDS) could be included in the CFSRs to address practice at the front end of the child services. NCANDS could prove useful as a means, for example, of identifying which services children are receiving post-investigation. Also critical to an evaluation of both front end services, as well as the overall functioning of services provided to abused and neglected children, the CFSRs should evaluate the cases of children in each state who die or suffer a nearly fatal injury due to child abuse and neglect.¹ Finally, to appropriately evaluate system outcomes, the CFSRs should include measures of how youth have transitioned out of care – such as measuring the rates of homelessness and college graduation among former foster youth.

There are two additional key components to promoting and measuring quality improvement when focusing on child welfare outcomes. First, there needs to be an appropriate balance between promoting best practices and enforcing

¹ While our current child welfare system is oriented to provide checks against the improvident removal of children through an independent judicial review where the burden is on the State to show the need for removal and reasonable efforts to reunify, there is no appropriate check in place when child protective services does not remove a child who is regularly being abused. Because this check does not otherwise exist in our system, a study of the cases where removal did not occur must be undertaken.

penalties when baseline goals are not achieved. In embracing this dichotomy, ACF plays a key role in gathering information from States and other stakeholders about best practices *and* in providing appropriate dissemination of best practices data so that the best practices can be implemented by local child welfare agencies.

In balancing this dichotomy, ACF must also be ready to enforce penalties when appropriate outcomes are not achieved or when IV-B or IV-E mandates are not being adhered to by the State. Although no child advocate is interested in depleting the funds used to assist children and families, sometimes this threat (or, indeed, this action) is necessary to develop an awareness of their system's shortcomings and to get state officials outside of the child welfare community to act on behalf of the betterment of children and families.

Second, because it takes a village to raise a child, it is important to engage a wide-range of stakeholders in gathering feedback on how ACF can best promote and measure continuous quality improvement in child welfare outcomes. ACF should regularly engage stakeholders outside the child welfare system such as foster youth, foster parents, kinship caregivers, service providers and statewide advocates to discuss, in real terms (not simply through numerical statistics), how these stakeholders believe child welfare agencies are positively or negatively serving them and their clients. This "real-world" picture can provide context to either highlight best practices or shine the light on areas where the system is not functioning effectively to promote positive outcomes for children and families. The importance of utilizing the expertise of outside stakeholders will be discussed in further detail below, in response to Question 4.

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

Stakeholders such as courts, clients and other child-serving agencies should play a key role in establishing targets for necessary improvement and in monitoring performance toward those targets. While CAI understands that the State Agency is the entity tasked with achieving set targets for child welfare performance and outcomes, often the eyes in the best position to honestly evaluate how the State Agency is performing come from outside the State Agency itself. Stakeholder input can be a valuable way to assess some of the intangibles such as how the culture of the Agency effects implementation of the written policy.

CAI would like to bring particular attention to how these outside stakeholders are identified. Currently, 45 CFR § 1355.33 incorporates "other individuals" in the team of reviewers that will participate in the statewide assessment. However, as currently drafted, these "other individuals" will be agreed upon by the State *and* ACF. While certainly understanding the desire to promote an environment of cooperation, CAI suggests that instead of requiring State approval of outside stakeholders, ACF, instead, provide independent notice to stakeholders within each State of the opportunity to participate in the statewide assessment process. In this way, ACF will likely get a more complete picture of State functioning because stakeholders who are currently critical of State practices will be more likely to come to the table.

To achieve this goal, CAI suggests that between three and six months before the assessment process begins, ACF engage in a community engagement campaign to ensure that all statewide stakeholders are aware of the opportunity to participate in the assessment of the State's Title IV-B and IV-E compliance.

Question 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?

As mentioned above, CAI, as an advocate for children, has no interest in depleting the funds used to assist children and families. However, CAI does wish to take this opportunity to stress the importance of enforcement of current requirements and assessing penalties to ensure continued quality improvement and achievement of positive outcomes for children and families. Unfortunately, within many state budgets, the needs of child welfare agencies and the need for child welfare services are not well understood and are, therefore, tragically underfunded. Particularly in these tough economic times and because children have a limited political voice, penalties become a very useful tool to advocate for the resources needed in the broader, statewide, budget landscape. CAI, therefore, recommends continued and enhanced enforcement of penalties when Title IV-B and IV-E requirements are not met.

Thank you for the opportunity to comment on the federal monitoring of Child and Family Services Programs. We hope our comments will prove helpful as the monitoring process is reevaluated. Feel free to contact me if you have any questions or if you would like any further input.

Sincerely,

A handwritten signature in black ink, appearing to read "Christina Riehl". The signature is fluid and cursive, with the first name "Christina" written in a larger, more prominent script than the last name "Riehl".

Christina Riehl
Senior Staff Attorney