

November 5, 2018

Debbie Seguin  
Assistant Director  
Office of Policy, U.S. Immigration and Customs Enforcement, Department of Homeland Security  
500 12th Street SW  
Washington, DC 20536

RE: DHS Docket No. ICEB-2018-0002, 83 FR 45486

Dear Ms. Seguin:

The Council of Parent Attorneys and Advocates (COPAA) exists to protect the rights of children with disabilities. We are writing today to oppose recommendations made in the Notice of Proposed Rulemaking (NPRM) that seeks to amend regulations relating to the apprehension, processing, care, custody, and release of alien juveniles.

We oppose the proposed regulations because their overall purpose is to bypass the Flores Settlement Agreement (*Flores*) and its related recent court orders. COPAA takes issue with provisions, or the lack thereof that will directly impact children with disabilities -- children who are away from their families and other supports, who have often experienced severe trauma before separation, on top of any disabilities they might also have. Therefore, we point out the following:

**Children Have Rights and Must Be Served:** Children enter the United States with a wide range of disabilities. The proposed regulations do not address any of their daily needs and the regulations propose to keep them in custody for longer periods of time. Under the proposal that would supersede *Flores*, the U.S. Department of Health and Human Services (DHS/HHS) would be able to detain children for prolonged periods in facilities that are not licensed by a state child welfare agency. The proposal would allow the DHS to “employ an entity outside of DHS that has relevant audit experience to ensure compliance with the family residential standards established by U.S. Immigration and Customs Enforcement (ICE).”<sup>1</sup> DHS claims that this would provide “materially identical assurances about the conditions” of family detention centers while allowing for longer periods of detention.<sup>2</sup>

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<sup>1</sup> Department of Homeland Security and Department of Health and Human Services, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” *Federal Register*, Vol. 83, No. 174, Sept. 7, 2018, p. 45525. <https://www.gpo.gov/fdsys/pkg/FR-2018-09-07/pdf/2018-19052.pdf> (Downloaded Oct. 15, 2018)

<sup>2</sup> *Id.*, p. 45488.

If implemented, the regulation would also end both *Flores* class counsel’s access to DHS/HHS facilities that hold minors, and ongoing reporting and monitoring requirements imposed by the court. Self-inspections by DHS and its contractors are much weaker than the protections that *Flores* provides. DHS’s record of oversight, transparency, and accountability with regard to immigration detention facilities is abysmal. This record demonstrates just how dangerous it would be to allow DHS to bypass state certification standards for facilities that detain children.

According to medical experts, DHS detention facilities are not appropriate places for children to be housed. In 2017, the American Academy of Pediatrics published a policy statement titled *Detention of Immigrant Children* stating that immigrant children seeking safe haven in the United States should never be placed in detention facilities.<sup>3</sup> The American Medical Association has also adopted a policy opposing family immigration detention given the negative health consequences that detention has on both children and their parents.<sup>4</sup> In 2018, the American College of Physicians released a policy stating that “forced family detention—indeinitely holding children and their parents, or children and their other primary adult family caregivers, in government detention centers until the adults’ immigration status is resolved—can be expected to result in considerable adverse harm to the detained children and other family members, including physical and mental health, that may follow them through their entire lives, and accordingly should not be implemented by the U.S. government.”<sup>5</sup>

Despite these and many other warnings from medical experts, DHS proposes in this NPRM to substitute its own ICE family residential standards where its family detention facilities cannot obtain licensing from state, municipal, or other appropriate child welfare entities.<sup>6</sup> This would have the effect of eliminating the critical *Flores* Settlement Agreement limitation on the detention of children in unlicensed facilities. As a result, and as explicitly intended by DHS in promulgating these proposed rules, DHS would detain children with their families for the entirety of their immigration proceedings--in effect, indefinitely.

**No Screening, Proper Treatment or Ongoing Support:** State-designated Protection and Advocacy Systems report that few children, if any are screened for disability-related issues upon transfer from Immigration and Customs Enforcement (ICE) to the Office of Refugee Resettlement (ORR) custody. To date and with no proposed improvements via the NPRM, while in detention, these children are not provided adequate evaluations that would help identify and address educational needs, other individualized treatment(s) including a behavior intervention plan for behavioral needs. Additionally, children on medication are not required

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<sup>3</sup> Julie M. Linton, Marsha Griffin, Alan Shapiro, American Academy of Pediatrics, *Policy Statement: Detention of Immigrant Children*, Apr. 2017, <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.

<sup>4</sup> American Medical Association, “AMA Adopts New Policies to Improve Health of Immigrants and Refugees,” June 12, 2017, <https://www.ama-assn.org/ama-adopts-new-policies-improve-health-immigrants-and-refugees>.

<sup>5</sup> American College of Physicians, “The Health Impact of Family Detentions in Immigration Cases,” July 3, 2018, [https://www.acponline.org/acp\\_policy/policies/family\\_detention\\_position\\_statement\\_2018.pdf](https://www.acponline.org/acp_policy/policies/family_detention_position_statement_2018.pdf).

<sup>6</sup> See 83 FR 45525

to be properly supervised by a physician and basic health supports such as insulin, hearing aids and more are not addressed in these regulations.<sup>7</sup>

**No Consideration of Disability Required for Placement:** The proposed regulations do not take into consideration if a child has a disability as part of placement determinations, particularly for secure facilities, whether juvenile jail-like facilities or secure residential treatment centers. The “service” to children with disabilities is placement in a secure residential treatment facility available only at the point in which there is a risk of harm to self or others. There is no consideration of least restrictive alternatives for children, regardless of disability status.

**Punitive Treatment Allowed:** There are reports of children with disabilities being restrained and secluded because their behavior needs are not being addressed.<sup>8</sup> These behaviors may be exhibited by children who have significant needs yet there is nothing to address this. Rather, they are punished with placement in secure facilities or psychiatric hospitals due to the behavior they cannot control.

There is no evidence that any amount of time in detention is safe for children.<sup>9</sup> In fact, even short periods of detention can cause psychological trauma and long-term mental health risks for children.<sup>10</sup> Studies of detained immigrants have shown that children and parents may suffer negative physical and emotional symptoms from detention, including anxiety, depression and posttraumatic stress disorder.<sup>11</sup> Detention itself undermines parental authority and capacity to respond to their children’s needs; this difficulty is complicated by parental mental health problems.<sup>12</sup> Parents in detention centers have described regressive behavioral changes in their children, including decreased eating, sleep disturbances, clinginess, withdrawal, self-injurious behavior, and aggression.<sup>13</sup>

The main purpose of the proposed change, that of legalizing indefinite detention of children with their families which is prohibited under *Flores*, is harmful in and of itself. Although separation of children from their parents is inherently harmful, so is child detention. Numerous clinical studies have demonstrated that the mitigating factor of parental presence

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<sup>7</sup> 2:85-cv-04544-DMG-AGR (ECF No. 470, Jul. 30, 2018) (discussing ORR Residential Treatment Centers, placement in secure facilities, notice of placement in secure facilities, and informed consent for administration of psychotropic drugs).

<sup>8</sup> See *id.*; see also *Doe v. Shenandoah Valley Juvenile Center Comm’n*, Class Action Complaint (W.D. Va. Oct. 4, 2017), [http://www.washlaw.org/pdf/svjc\\_class\\_action\\_complaint\\_signed.PDF](http://www.washlaw.org/pdf/svjc_class_action_complaint_signed.PDF). See Bob Ortega, *CNN*, “Virginia report clears child detention center of abuse, but youths’ lawyer says investigation was insufficient,” Aug. 14, 2018, <https://www.cnn.com/2018/08/14/us/virginia-clears-shenandoah-detention-center-abuse-allegations-invs/index.html> (discussing the findings of a state investigation finding allegations related to Shenandoah did not amount to child abuse or neglect—an investigation counsel challenge as “shockingly inadequate.”).

<sup>9</sup> Julie M. Linton, Marsha Griffin, Alan Shapiro, American Academy of Pediatrics, *Policy Statement: Detention of Immigrant Children*, Apr. 2017, <http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

does not negate the damaging impact of detention on the physical and mental health of children.

The data are clear that forced separation causes complex stress in young victims. And yet, the NPRM only promotes more toxic stress that will result in physiological changes in the brain which can disable a child's ability to learn, alter the physiology of a developing brain, and inhibit the performance of daily activities such as thinking, reading, and learning. Finally, the NPRM unacceptably omits the Departments' legal and moral obligations to address all the key needs of children with disabilities, including but not limited to identification, medical treatment, accommodation, assistive technology, appropriately designed educational services, behavior related evaluation and planning, and placement.

COPAA urges you to take seriously your obligation to equitably serve all children, regardless of immigrant status. Please reject the NPRM. Thank you for considering our comments.

Sincerely,



Denise Marshall  
Executive Director

*COPAA is an independent, nonprofit organization of parents, attorneys, advocates, and related professionals. COPAA members nationwide work to protect the civil rights and secure excellence in education on behalf of children with disabilities. COPAA's mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares him or her for meaningful employment, higher education and lifelong learning, as well as full participation in his or her community.*