

300 Abuse and Background Checks

303 Entry on to and Expungement from the Central Child Abuse Registry

1.0 Legal Authorization

- 1.1 The legal authority for these regulations is found in the **Delaware Code: Title 10, Chapters 9 and 10; Title 11, Chapters 5 and 85; Title 16, Chapter 9; and Title 31, Chapter 3.**

2.0 Purpose

- 2.1 The purpose of these regulations is to provide a process for notice and opportunity for hearing prior to a person's entry on the Central Child Abuse Registry.

3.0 Date of Implementation

- 3.1 These regulations become effective ten days after publication in final form in the Delaware Register of Regulations.

4.0 Individuals Subject to the Law

- 4.1 Persons, adults or children, substantiated on or after April 1, 2001 to have committed child abuse or neglect, except that the opportunity for administrative expungement shall be provided for substantiated cases before or after April 1, 2001 unless a disqualifying factor applies.

5.0 Definitions

"Abuse" as defined in 16 **Del.C.**, § 902 (1) means any physical injury to a child by those responsible for the care, custody, and control of the child, through unjustified force as defined in 11 **Del.C.**, §468, emotional abuse, torture, criminally negligent treatment, sexual abuse, exploitation, or mistreatment.

"Administrative Expungement" as defined in 16 **Del.C.**, § 902A (g) means that the individual's name shall no longer be reported to employers pursuant to 11 **Del.C.** § 8563(b) in a Central Child Abuse Registry check as a substantiated case from the central registry. Notwithstanding the granting of a request for administrative expungement under this section, the individual's name and other case information shall remain on the central registry as substantiated for all other purposes, including, but not limited to, the Division's use of such information for historical, treatment and investigative purposes, child care licensing decisions, reporting pursuant to 31 **Del.C.** §309, reporting to law enforcement authorities, or any other purpose set forth in 16 **Del.C.** § 906(b).

"Central Registry" as defined in 16 **Del.C.**, §902(2) means a registry of information about persons the Division of Family Services has substantiated to have committed child abuse and neglect. Substantiation may be made through civil or criminal proceedings or through civil administrative decision or proceedings where the burden of proof is at a minimum a preponderance of the evidence. The persons shall have been responsible for the care, custody, and control of the child as defined in 16 **Del.C.** §902 (13).

"Department" means the Department of Services for Children, Youth and Their Families.

"Disqualifying Factors" means items that disqualify an individual from the opportunity for notice and a substantiation hearing or the opportunity for administrative expungement.

"Division" means the Division of Family Services.

"Good Cause" means discretionary factors that justify not reporting a substantiated case of child abuse or neglect to an employer. It depends upon the circumstances of the individual case and the finding of it lies in the discretion of the decision-maker to which the decision is committed.

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“Neglect” as defined in 16 Del.C., §902 means the failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary: education as required by law; nutrition; or medical, surgical, or any other care necessary for the child's well-being.

“Intent to Substantiate” means a person for whom the Division of Family Services intends to substantiate for child abuse or neglect, but whose name has not been entered on the registry.

“Preponderance of the Evidence” is a standard of proof that is met when a party's evidence indicates that the fact "is more likely than not" what the party alleges it to be. Evidence which, as a whole, shows the fact to be proved is more probable than not.

“Substantiated” means that the Division of Family Services after an investigation has concluded by a preponderance of the evidence that child abuse or neglect occurred. In addition, substantiation may occur through civil or criminal judicial proceedings, failure to request a Substantiation Hearing within the specified time frame, or by decision of a hearing officer.

“Substantiation Hearing” means a hearing held by a hearing officer to determine whether or not an individual committed child abuse or neglect.

“Substantiated Person” means a person who has been substantiated by the Division of Family Services as having committed child abuse or neglect and has been entered on the Central Child Abuse Registry.

6.0 Substantiation Hearing

- 6.1 Notice to Substantiated Persons Pending Entry on the Central Child Abuse Registry
- 6.2 At the conclusion of an investigation the Division shall send written notice, by certified mail, return receipt requested to the person's last known address, of its intent to place a person on the Central Registry for having committed child abuse or neglect, and shall advise the individual of the opportunity to request a Substantiation Hearing. The person can also be notified by personal delivery and accepting service of the notice in writing.
- 6.3 A person substantiated for child abuse or neglect, or an attorney acting on his or her behalf, shall have twenty (20) calendar days from the date the notice was mailed to request a Substantiation Hearing. The request for a Substantiation Hearing shall be in writing and shall be received by the Division Director, or designee, within 20 days of the date the notice was mailed.
- 6.4 Though the Division shall still issue its notice and the individual may request a Substantiation Hearing within twenty (20) days, when such Substantiation Hearing is timely requested, such hearing shall be stayed if civil or criminal proceedings regarding the same allegations of child abuse or neglect are pending. He or she shall be eligible to reschedule a Substantiation Hearing following the resolution of the criminal or delinquency charges or other civil court proceeding, unless the same conditions in Regulation 10.0 apply for the same child abuse or neglect incident investigated by the Division.
- 6.5 A person substantiated for child abuse or neglect may waive in writing his or her right to a Substantiation Hearing and request an Administrative Expungement in writing to the Division Director, or designee.

7.0 Disqualifying Factors

- 7.1 See circumstances identified in Regulation 10.0.

8.0 Procedures

- 8.1 Unless postponed or stayed, within twenty (20) calendar days of receiving a request for a hearing by the person found to have committed child abuse or neglect (appellant), a Substantiation Hearing date shall be set, and such hearing shall be held by the hearing officer within sixty (60) calendar days of the receipt of such request.
- 8.2 The burden of proof at the hearing shall be upon the Division, which shall be required to prove by a preponderance of the evidence that abuse or neglect occurred.
- 8.3 The appellant and the Division may have legal representation during the hearing. The parties may also present witnesses and other evidence on their behalf.

- 8.4 The hearing officer shall have the authority to:
 - 8.4.1 issue subpoenas for witnesses and other sources of evidence, either at the request of the Division or at the request of the appellant;
 - 8.4.2 administer oaths to witnesses;
 - 8.4.3 exclude irrelevant, immaterial, insubstantial, cumulative and privileged evidence;
 - 8.4.4 limit proof, rebuttal and cross-examination if they are repetitive; and
 - 8.4.5 hold pre-hearing conferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and expedite the course of the hearing.
- 8.5 An audio tape recording shall be made of the hearing. Copies of the tape or request for a transcript of same may be made at the request of and expense of the appellant.
- 8.6 Following the Substantiation Hearing, the hearing officer shall issue a written decision to the appellant by certified mail, return receipt requested and by regular mail to the Division no later than sixty (60) calendar days from the last day of the conclusion of the hearing and arguments.
- 8.7 The decision shall include a brief summary of evidence and findings of fact based upon the evidence and conclusions of law. The appellant should be advised of the right to request an appeal of the decision to Family Court.

9.0 Appeal to Family Court Following Substantiation Hearing Decision

- 9.1 The appellant or the Division may request a review by Family Court within thirty (30) days of the date of the hearing officer's decision.
- 9.2 The Family Court review shall be limited in scope to whether there is substantial evidence to support the findings of fact or whether any error of law was made.
- 9.3 Such reviews, hearings and decisions, audio tapes, transcripts, and records on appeal to Family Court shall be confidential and not open to the public. Neither the Administrative Procedures Act 29 **Del.C.**, Ch.101 nor the Freedom of Information Act shall apply to such hearings, any record thereof, or any evidence or documents produced or introduced at such hearings. The Division shall have the discretion to release records, the decision, and hearing evidence pursuant to 16 **Del.C.** § 906 (b)(18).

10.0 Entry on to the Central Child Abuse Registry

- 10.1 A person found to have committed child abuse or neglect shall be entered on the Central Registry when he or she:
 - 10.1.1 fails to make timely request in writing for a Substantiation Hearing in response to a notice as specified in law and regulation or failed to make a timely written request to appeal a similar notice issued prior to the enactment of this law;
 - 10.1.2 fails to appear at a scheduled Substantiation Hearing without prior approval of the hearing officer or fails to show that good cause existed to postpone the hearing within ten (10) calendar days after the scheduled hearing date of the reason for his or her absence from the hearing;
 - 10.1.3 has been afforded a hearing and the substantiation was upheld;
 - 10.1.4 has been convicted or pled guilty to a criminal offense contained in **Subchapters II or V of Chapter 5 of Title 11** including those taken nolo contendere or subsequently discharged or dismissed under a First Offenders program pursuant to 10 **Del.C.** §1024 and the plea or conviction is for the same incident substantiated by the Division;
 - 10.1.5 has been adjudicated delinquent as a juvenile for any of the comparable criminal offenses listed for adults for the same incident investigated by the Division; and
 - 10.1.6 has been substantiated for abuse or neglect at a civil court hearing or administrative hearing at which the minimum standard of proof was preponderance of the evidence for the same incident investigated by the Division.
 - 10.1.7 has been substantiated as provided in 16 **Del.C.** § 902A(f)(1).

11.0 Administrative Expungement of Substantiated Cases

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- 11.1 An application for administrative expungement of a substantiated case may be made by any individual whose name is entered on the Central Child Abuse Registry unless there is one or more disqualifying factors. Expungement may be granted only for good cause, and at the discretion of the Division considering, but not limited to, the factors below:
- 11.1.1 the nature of the substantiation with respect to safety of the children who may come into the individual's direct care;
 - 11.1.2 compliance with a DFS recommended or court-ordered treatment plan;
 - 11.1.3 history of substantiated or unsubstantiated reports of child abuse and neglect;
 - 11.1.4 any evidence of acts involving weapons, explosive devices, or threats of harm;
 - 11.1.5 any evidence of domestic violence involving assaults, stalking, or cruelty to animals;
 - 11.1.6 any evidence of addiction to drugs or alcohol that presents a significant and current threat of harm to children;
 - 11.1.7 untreated or treated medical conditions that present a significant and current threat of harm to children;
 - 11.1.8 length of time since the child abuse or neglect incident;
 - 11.1.9 seriousness of the child abuse or neglect incident;
 - 11.1.10 number of child abuse or neglect incidents;
 - 11.1.11 indication of remorse; and changed behavior.
 - 11.1.12 The Division may consider any other factors relevant to the substantiated individual's application for expungement.

12.0 Disqualifying Factors

- 12.1 The entire criminal history of a person, including all convictions, is required to be reported for any person seeking employment with a licensed child care provider (11 **Del.C.** § 8561) and for a person seeking employment in a nursing home, hospital, or other entity licensed pursuant to Chapter 11 of Title 16 of the Delaware Code (16 **Del.C.** §1141), thus an individual shall not be eligible for Administrative Expungement when he or she has been convicted, pled guilty, or has been adjudicated delinquent via plea or adjudication of any criminal offense contained in **Subchapters II or V of Chapter 5 of Title 11**, or of the same offenses if charged or delinquent in which the person was responsible for the care, custody, and control of the child at the time of the offense.

13.0 Procedures

- 13.1 A person placed on the Central Child Abuse Registry may submit a written request for Administrative Expungement to the Division Director, or designee, with the reasons therefor.
- 13.2 Within sixty (60) days of receiving the written request for Administrative Expungement, the Division shall send its decision by certified mail, return receipt requested to the person requesting expungement. The decision shall include notice of the right to appeal to a hearing officer for a hearing on the issue of administrative expungement.
- 13.3 A person placed on the Central Child Abuse Registry, or an attorney acting on his or her behalf, shall have thirty (30) calendar days of the Division's decision to request an Administrative Expungement hearing before a hearing officer. The request shall be made in writing to the hearing officer.
- 13.4 The procedures for an Administrative Expungement hearing shall be the same as for the Substantiation Hearing before a hearing officer. (See Regulations 8.3-8.7).

14.0 Appeal to Family Court Following Administrative Expungement Decision

- 14.1 Within thirty (30) days of the date of the hearing officer's decision, either the Division or the person requesting expungement, or an attorney acting on his or her behalf, may file a written appeal to Family Court.
- 14.2 Such reviews, hearings and decisions, audio tapes, transcripts, and records on appeal to Family Court shall be confidential and not open to the public. Neither the Administrative Procedures Act 29 **Del.C.**, Ch.101 nor the Freedom of Information Act shall apply to such

hearings, any record thereof, or any evidence or documents produced or introduced at such hearings. The Division shall have the discretion to release records, the decision, and hearing evidence pursuant to 16 **Del.C.** § 906 (b)(18).

15.0 Cases Substantiated Prior to April 1, 2001

- 15.1 A substantiated person can request a Substantiation Hearing unless they have already been notified by the Division of the right to appeal and failed to appeal, have already been given a hearing regarding the substantiation, or he or she have the circumstances described in Regulation 10.0 or in 16 **Del.C.** § 902A(f)(1).
- 15.2 A substantiated person can request an Administrative Expungement unless a disqualifying factor applies.

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