



Administrative Policies and Procedures: 14.16

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| Subject: | Due Process Procedures and the Release of Information for Alleged Perpetrators of Child Abuse and Neglect |
| Authority: | TCA 37-1-401 et seq; 37-1-601 et seq; 37-1-607; 37-5-105 (3); 37-5-106; 37-5-107; 37-5-108; Child Abuse Prevention and Treatment Act (CAPTA) |
| Standards: | None |
| Application: | All Department of Children's Services Due Process Procedures, Child Protective Services and Child Programs Employees |
| Policy Statement: | |
| DCS provides administrative and due process procedures for alleged perpetrators who have been named in substantiated reports of abuse or neglect and releases the information from records involving substantiated perpetrators. | |
| Purpose: | |
| To establish procedures to review substantiated reports of abuse and neglect and to release the identity and other related information of a substantiated perpetrator for the purpose of protecting children from any form of child abuse or neglect. | |
| Procedures: | |
| A. Initiation Due Process | <p>Upon receipt of a request for Formal File Review, staff in the Due Process Procedures Division:</p> <ul style="list-style-type: none">a) Notify the CPS Case Manager and the supervisor that the Formal File Review has been requested, and instruct that any documents or evidence used and not uploaded into TFACTS be sent to the Due Process Procedures Division, within fifteen (15) business days.b) Determine if there are pending administrative or judicial proceedings involving the same allegation investigated that would require a Stay to be issued (See Section F regarding the criteria for issuing a Stay).c) Send the appropriate response to the requestor within ten (10) business days of receiving the Formal File Review request.<ul style="list-style-type: none">◆ If the review request is accepted by the Due Process Procedures Division, the response to the requestor will include information and timeframes for submitting rebuttal evidence.d) Update TFACTS of initial actions taken. |

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| | <p>e) Conduct the Formal File Review once the rebuttal deadline has expired.</p> <p>Note: Extension requests are approved on a case by case basis and are dependent on the circumstances of the request. Extensions that go beyond the allotted review process timeframe are approved when the requestor waives the required ninety (90) business-day deadline.</p> |
| B. Outcome of the Formal File Review | <p>The Formal File Review is completed within ninety (90) business days of the date of initiation and is based upon validation factors as outlined in <u>Rules of the Department of Children's Services Child Protective Services Chapter 0250-07-09 Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records.</u></p> <ol style="list-style-type: none">1. If the classification decision is <u>upheld or modified</u>, staff of Due Process Procedures sends a Notice of Results informing the requestor of the review decision. The notice is sent to the perpetrator via certified mail restricted delivery/electronic mail and includes an offer for a Fair Hearing.2. If the classification decision is <u>overturned</u>, staff in the Due Process Procedures Division will:<ol style="list-style-type: none">a) Update TFACTS with the results of the review by changing the classification and noting that it was overturned; andb) Send a Notice of Reclassification informing the requestor of the review decision. |
| C. Emergency Formal File Reviews | <p>Emergency Formal File Reviews are conducted for alleged perpetrators who have been named in substantiated reports of abuse and neglect and are currently employed by or volunteers in a setting where there is unsupervised access to children (e.g., teacher, boy/girl scout troop leader, school custodian, medical or emergency response personnel, and/or youth minister). Exceptions to the Emergency Formal File Review include, but are not limited to:</p> <ul style="list-style-type: none">◆ Foster parent whose foster home has been suspended; or◆ School personnel who have been terminated or resigned. <ol style="list-style-type: none">1. If a determination is made that emergency procedures apply to the alleged perpetrator, the Due Process Procedures Division completes the emergency review within ten (10) business days.2. Once the Due Process Procedures Division determines that an emergency review is warranted, the region/SIU supervisor completes the request document and submits it to the Due Process Procedures Division at the close of the investigation.3. Upon completion of the emergency review, the notice is sent to the alleged perpetrator by certified restricted mail delivery/electronic mail and includes an offer for a Fair Hearing, and to any agency involved via regular USPS.4. Due Process Procedures staff notifies any involved agency of the final outcome at the conclusion of all appeal actions. |

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| <p>D. Automatic Formal File Reviews for Minors</p> | <p>All minor children (custodial and non-custodial) who have been named in substantiated reports of abuse and neglect receive an automatic Formal File Review upon the closure of the CPS case.</p> <ol style="list-style-type: none"> 1. The Due Process Procedures staff initiates the review and follows the same time frames as the Formal File Review Process for alleged perpetrators over age 18. Staff in the Due Process Procedures Division will: <ol style="list-style-type: none"> a) Notify the CPS Case Manager and the supervisor that the Formal File Review has been initiated, and instruct that any documents or evidence used and not uploaded into TFACTS be sent to the Due Process Procedures Division, within fifteen (15) business days. b) Update TFACTS of initial actions taken. c) Complete the Formal File Review. 2. If the classification decision is <u>upheld or modified</u>, staff in the Due Process Procedures Division will send a Notice of Results informing the parent or legal guardian of the review decision. The notice is sent via certified mail and includes an offer for a Fair Hearing. 3. If the classification decision is <u>overturned</u>, staff in the Due Process Procedures Division will: <ol style="list-style-type: none"> a) Update TFACTS with the results of the review by changing the classification and noting that it was the overturned; and b) Send a Notice of Reclassification informing the parent or legal guardian of the review decision. |
| <p>E. Due Process for Custodial Minors</p> | <p>When a minor child who has been named in substantiated report of abuse and neglect is state custody, the minor receives automatic due process rights upon the closure of the CPS case.</p> <ol style="list-style-type: none"> 1. Due Process Procedures staff notifies the minor's custodial FSW and supervisor that due process has been initiated. 2. The FSW provides notification to the minor's Guardian ad Litem (GAL), and to the minor's parent, if appropriate. 3. Due Process Procedures staff initiates due process by conducting the Formal File Review using the timeframes outlined in Section A. 4. Upon completion of the Formal File Review, Due Process Procedures staff notifies the custodial FSW and the CPS Case Manager and CPS Team Leader, of the outcome. The FSW informs the GAL and parents, when applicable, of the outcome of the review. <ol style="list-style-type: none"> a) If the minor's substantiation is upheld, he/she receives notification of a <i>Fair Hearing</i>. <ul style="list-style-type: none"> ◆ Due Process Procedures staff notifies the Administrative Procedures Division (APD) of the right to the hearing for the minor. |

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| | <ul style="list-style-type: none"> ◆ The minor's Fair Hearing is automatically put on Stay until the child exits DCS custody. ◆ Prior to exiting DCS custody, notice of the right to a Fair Hearing is provided to the substantiated minor and their identified custodian (See Case Closure Protocol). If the minor is exiting custody due to reaching the age of majority, then the custodian notification is not required. • The custodial FSW provides notice through Notice and Acknowledgement of Appeal Rights for Minor Substantiated Perpetrators and submits a copy of the form to APD. • The substantiated minor and/or custodian, when applicable, has twenty (20) business days to request a Fair Hearing unless good cause can be shown as to why the appeal could not be filed within the time limit. ◆ The Administrative Procedures Division sends the scheduling notice or order to the FSW, CPS Case Manager, TL for the FSW and CPS Case Manager, TC for the FSW and CPS Case Manager, DCS Legal, the Director of the Due Process Procedures Division, client/client attorney, and/or GAL. ◆ The CPS supervisor ensures that the Child Protective Services Appeal Summary has been completed and sent to APD. <p>b) If the minor's substantiation is overturned at any stage of due process, CPS is responsible for notifying community partners that may have participated in the investigation.</p> |
| <p>F. Stay of Proceedings</p> | <p>An alleged perpetrator's Formal File Review or Fair Hearing may be placed on a Stay or "hold" if they are involved in administrative or judicial proceedings related to the same allegations investigated by CPS. The Stay remains in place until the administrative or judicial matter has been resolved.</p> <ol style="list-style-type: none"> 1. Due Process Procedures staff issue a Stay if the review decision is impacted by pending administrative or judicial proceedings involving the same allegations investigated. 2. Once a Stay is issued, Due Process Procedures staff: <ol style="list-style-type: none"> a) Send a Notice of Stay to the requestor via USPS using certified and restricted delivery. (Notices sent to a correctional facility or to the attention of an attorney are sent by certified delivery only). b) Send a copy of the Notice of Stay to the CPS Case Manager and Supervisor. c) Update the review status in TFACTS. 3. The CPS Supervisor provides documentation of the final disposition when the administrative or judicial matter is unfavorable for the alleged perpetrator. |

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| | <p>4. When the outcome of an administrative or judicial proceeding is favorable for the alleged perpetrator, he/she may request that due process proceedings are reinstated. The alleged perpetrator must request the reinstatement in writing to the Due Process Procedures Division within thirty (30) calendar days of the date a final order has been issued by the administrative or judicial proceeding. Due process resumes at the point where it was originally halted by the Stay.</p> <p>5. If the decision by the administrative or judicial proceedings is unfavorable or if the alleged perpetrator fails to request reinstatement, a release of the information is made to any child welfare agency with which the alleged perpetrator may be working, the licensing authority or any other organization/agency through which the perpetrator has access to children.</p> |
| G. Termination of the Review Process | <p>Due Process Procedures staff must consider any conviction or adjudication related to the same allegations investigated by CPS as conclusive evidence that the alleged perpetrator was responsible for the acts alleged and may have no further review or hearing rights within the Department. Termination occurs when:</p> <ol style="list-style-type: none"> 1. The alleged perpetrator is found guilty or enters a guilty plea to any criminal offense related to the same allegations investigated by CPS; or 2. The alleged perpetrator receives an administrative adjudication from any administrative or judicial proceedings that they have committed, or knowingly allowed to be committed, abuse or neglect related to the same allegations investigated by CPS. <p>Due Process Procedures sends written notification informing the alleged perpetrator that their rights to due process have been exhausted and that they will be identified as a substantiated perpetrator of child abuse or neglect within DCS records.</p> |
| H. Hearings | <p>When an alleged perpetrator's substantiation is upheld during the Formal File Review, they have the opportunity to request Fair Hearing which is conducted by the Administrative Procedures Division (APD). When a request for a hearing is received:</p> <ol style="list-style-type: none"> 1. The APD notifies the Supervisor, Team Coordinator, and the Regional General Counsel of the request. 2. The CPS Supervisor ensures that the Appeal Summary is completed, using the Child Protective Services Appeal Summary, and sent to the APD prior to the hearing. 3. Any determination of a settlement or withdrawal of a substantiation is approved by the CPS Regional Director or designee upon consultation with DCS Legal. <ol style="list-style-type: none"> a) All DCS employees involved in the hearing are included in the decision. b) Disagreements within the team are addressed by the CPS Regional Director and DCS Legal representative upon consultation with the Office of Child Safety Leadership and the Office of General Counsel Leadership. |

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| | Upon conclusion of the hearing or appropriate settlement, APD notifies Due Process Procedures staff to update the classification decision in TFACTS, when applicable. |
| I. Release of Information Involving Substantiations | <p>1. After a substantiated perpetrator has exhausted all reviews permitted by the <u>Rules of the Department of Children's Services Child Protective Services Chapter 0250-07-09 Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records</u>, Due Process Procedures staff releases the identity and other related information regarding a substantiated perpetrator of abuse or neglect to organizations or individuals providing care, supervision, instruction or treatment of children either as an employee, employer or volunteer. This notification occurs when the perpetrator:</p> <ul style="list-style-type: none"> ◆ Has current access to children either through employment or volunteer status in a child-serving agency, institution, organization, public or private school; or ◆ Is an approved foster or adoptive parent. <p>2. DCS will not release any information from its records to any organization or person for purposes of pre-employment screening or licensing, to identify any individual as a perpetrator of abuse or neglect until the individual has exhausted all reviews/hearings permitted by the <u>Rules of the Department of Children's Services Child Protective Services Chapter 0250-07-09 Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records</u>.</p> |

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| Forms: | <p><i>Child Protective Services Appeal Summary</i></p> <p><u>Notice and Acknowledgement of Appeal Rights for Minor Substantiated Perpetrators</u> (letter)</p> |
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| Collateral documents: | <p><u>Rules of the Department of Children's Services Child Protective Services Chapter 0250-07-09 Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records</u></p> <p><u>Case Closure Protocol</u></p> |
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| Glossary: | |
| Term | Definition |
| Change/Modify | An action taken to change or modify the substantiated allegation of abuse or neglect when a determination is made that the evidence in the CPS investigation meets a different definition of abuse or neglect than the classification substantiated during the investigation. |

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| Fair Hearing | <i>An administrative proceeding, in accordance with the provisions of the Uniform Administrative Procedures Act, before an administrative law judge, set to determine whether the preponderance of the evidence, in light of the entire record, proves that the alleged perpetrator committed any form of abuse or neglect. The conclusion of the Fair Hearing exhausts Due Process as extended, internally, by the Department of Children's Services.</i> |
| Formal File Review | <i>An internal review of a substantiated CPS investigation.</i> |
| Minor Perpetrator | <i>A person who is under the age of eighteen (18) at the time of substantiation and case closure.</i> |
| Overtured | <i>There is insufficient evidence that child abuse or neglect occurred and the original CPS classification decision is changed.</i> |
| Perpetrator | <i>An individual found, through a CPS investigation, to have committed child abuse or neglect.</i> |
| Rebuttal Evidence | <i>Any documentation, information or evidence submitted by, or on behalf of an individual named in a substantiated report of abuse or neglect, that serves to dispute or rebut the allegations made against the individual.</i> |
| Stay | <i>To hold, delay or stop a proceeding.</i> |
| Substantiated | <i>The classification assigned to an individual determined to be a perpetrator of child abuse or neglect.</i> |
| Terminated | <i>To stop or end due process procedures.</i> |
| Upheld | <i>There is substantial and material evidence that child abuse or neglect occurred and the original CPS classification decision is not changed.</i> |