

## 1202.0 Notification of and Appeal of Substantiated Abuse and/or Neglect Findings

### 1202.1 Policy Approval Clearance Record

<input checked="" type="checkbox"/> DCFS Child Welfare Policy	This policy supersedes: DCFS CPS Manual, Sect 119 Parent's Right to Review Case Findings	Number of pages in Policy: 5
Review by Representative from the Office of the Attorney General:	Date: 3/5/14	Initial Policy Effective: Date: 6/15/2011
DCFS Rural Region Manager Approval:	Date: 3/5/14	Revised Policy Effective:: Date: 4/4/2014
DCFS Deputy Administrator Approval	Date: 3/5/14	

### 1202.2 Statement of Purpose

**1202.2.1 Policy Statement:** DCFS will maintain an appeal policy process in accordance with state and federal mandates.

**1202.2.2 Purpose:** To provide due process that complies with state and federal law requirements to individuals who have a substantiated finding of abuse and/or neglect documented in the Central Registry. The appeal process ensures notice and an opportunity to be heard to individuals with a substantiated report and further ensures the accuracy of records maintained in the Central Registry.

### 1202.3 Authority

CAPTA Section 106 (b) (2) (A) (xii)  
NRS 432.0999, .100, .110, .120, .130  
NRS 233B.130  
NRS 432B.310, .315, 317  
NAC 432B.170

### 1202.4 Definitions

**1202.4.1 NRS 432B.020 "Abuse or neglect of a child" defined.**

1. "Abuse or neglect of a child" means, except as otherwise provided in subsection 2:

- (a) Physical or mental injury of a non-accidental nature;
- (b) Sexual abuse or sexual exploitation; or
- (c) Negligent treatment or maltreatment as set forth in [NRS 432B.140](#),

of a child caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

2. A child is not abused or neglected, nor is the health or welfare of the child harmed or threatened for the sole reason that:

(a) The parent of the child delivers the child to a provider of emergency services pursuant to [NRS 432B.630](#), if the parent complies with the requirements of paragraph (a) of subsection 3 of that section; or

(b) The parent or guardian of the child, in good faith, selects and depends upon non-medical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this State in lieu of medical treatment. This paragraph does not limit the court in ensuring that a child receive a medical examination and treatment pursuant to [NRS 62E.280](#).

3. As used in this section, “allow” means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected.

- 1202.4.2 Agency which provides child welfare services:** (NRS 432B.030)  
1. In a county whose population is less than 100,000, the local office of the DCFS;  
2. In a county whose population is 100,000 or more, the agency of the county, which provides or arranges for necessary child welfare services.  
Note: For the purposes of this policy, the agency which provides child welfare services in number 1 and 2 above is referred to as the child welfare agency.
- 1202.4.3 Appeal:** a procedure afforded to an individual who has a substantiated finding of abuse and/or neglect documented in the Central Registry which provides the individual with notice of the decision and an opportunity to have a higher authority hear their request to overturn the decision.
- 1202.4.4 Central Registry:** means the Statewide Central Registry for the collection of information concerning the abuse and neglect of a child established by NRS 432.0999 to NRS 432.130 inclusive, and maintained by the DCFS.
- 1202.4.5 Impartial designee:** means agency management level staff that has had no direct involvement with the case at the caseworker and/or supervisory level. Any of the following people in the following positions: District Office Managers, Rural Regional Manager, DCFS Central Office Social Services Specialist III or the Deputy Administrator for DCFS can be considered impartial designees if the District Office Manager cannot hear the Appeal; either because they are unavailable or are not considered “impartial” in a given case.
- 1202.4.6 Investigation:** process used to determine case findings in a report of possible abuse or neglect of a child.
- 1202.4.7 Parent:** refers to the birth or adoptive parent or legal guardian of a child.
- 1202.4.8 Substantiated:** means that a report made pursuant to NRS 432B.220 was investigated and that credible evidence of the abuse or neglect exists (NAC 432B.170 (7) (a)).
- 1202.4.9 Unsubstantiated:** means that the report made pursuant to NRS 432B.220 was investigated and that no credible evidence of abuse or neglect exists. The term includes efforts made by an agency which provides child welfare services to prove or disprove an allegation of abuse or neglect that the agency is unable to locate the child or the person responsible for the welfare of the child. (NAC 432B.170 (7) (b)).

## 1202.5 Procedures

### 1202.5.1 A standardized procedure for notifying adults of the outcome of child maltreatment investigations and in the case of a substantiated child maltreatment outcome, the Appeal Process.

### 1202.5.2 Investigation Outcome and Notification:

Upon completion of an investigation, the caseworker will submit the investigation findings and notification letter to their supervisor for approval. Once the investigation findings are approved, the supervisor will sign and send out the notification letter, within 5 business days of findings.

1. If the investigation results in a lack of credible evidence to substantiate child maltreatment the caseworker will complete the "*Investigation Results and Notice to Unsubstantiate*" letter in UNITY and send via regular US Parcel Post to the person responsible for the child's welfare named in the report.
2. If credible evidence exists to support an allegation of substantiated child maltreatment the caseworker will complete the "*Investigation Results and Notice to Substantiate/Right to Appeal*" letter which includes information on the Appeal Process. Send via certified US Parcel Post, with return receipt requested. Letter must inform the person responsible for the child's welfare that they only have 15 business days to request an appeal of the substantiated finding.
3. If an allegation is substantiated and the person submits an appeal within 15 business days from receipt of the notice of the right to appeal letter the person's name will not be entered in the Central Registry until the appeal process is completed and the substantiation is upheld.
4. If an allegation is substantiated and the person does not submit an appeal within 15 business days from receipt of the notice of the right to appeal letter the person's name will be entered in the Central Registry.

### 1202.5.3 Stay of Appeal Pending 432B Court Hearing

An administrative appeal must be stayed when the individual has a pending adjudicatory hearing before the court pursuant to NRS 432B.530 which arose out of the same incident as the incident upon which the substantiated report was premised.

1202.5.3.1 **Purpose:** The purpose of the stay is to comply with NRS 432B.317(3) which requires the stay of the administrative appeal pending the court hearing. The hearing process before the court provides the individual with their due process right to notice and an opportunity to be heard before their name is entered into the Central Registry.

### 1202.5.3.2 A. Stay Actions Steps (UNITY Window- CFS 720U):

1. Enter Petition file date in UNITY.
2. Enter Outcome date on which the judge issues a written decision regarding the abuse or neglect in UNITY.
3. Enter court decision type in UNITY:
  - a. Dismissed – The judge dismissed the petition with or without hearing the case. Result- substantiation overturned.
  - b. In Need of Protection – The judge made findings to support a legal conclusion that the child or children were in need of protection due to abuse or neglect by a person legally responsible for their care. Result- substantiation upheld.
  - c. No Protection – The judge made findings to support a legal conclusion that the child or children were not in need of protection due to abuse or neglect by a person legally responsible for their care. Result- substantiation overturned.

B. Stay Action Process

1. A conclusive presumption that a report of child abuse or neglect is substantiated is created and the person's name is entered in the Central Registry when the court makes a final determination that the child or children were in need of protection due to abuse or neglect by the person legally responsible for their care.

**1202.5.4 Level 1 – Child Welfare Agency Appeal – District Office Manager**

(or impartial designee)

If an individual appeals a substantiated finding the decision will be reviewed first by the District Office Manager of the local child welfare agency within 15 business days after the date in which the appeal was received.

**1202.5.4.1 Purpose:** The purpose of the District Office Manager review is to examine the facts and conditions that led to the decision to substantiate.

**A. Appeal Action Steps:**

1. Complete a review of the file, organize a discussion between caseworker and supervisor to resolve any unanswered questions, if need be.
2. A meeting may be scheduled with the subject of the report and any other individuals the subject requests to be heard (family members, attorneys, etc.) to provide additional information, if necessary. The District Office Manager assessing the Appeal will resolve any specific concerns or conflicts regarding attendees.
3. Review and consider any additional information or evidence that either party submits.
4. The District Office Manager shall decide whether or not to uphold or amend the decision to substantiate.
5. If substantiation is upheld, decision is forwarded to Level Two.

**B. Appeal Action Process:**

1. Review by the District Office Manager must be completed within 15 business days after receipt of request for appeal from the person responsible.
2. If the decision to substantiate is upheld, the District Office Manager will send the letter titled, "*Results of Level One Child Welfare Agency Appeal to Uphold Substantiation*", via regular US Parcel Post and will enter the appeal outcome in UNITY (Investigation Appeal window CFS026), within 5 business days.
3. The District Office Manager must forward the appeal to Level Two for review.
4. If the decision to substantiate is reversed, the District Office Manager will send the letter titled, "*Results of Level One Child Welfare Agency Appeal and Notice of Determination Amendment*", via regular US Parcel Post and will enter the appeal outcome in UNITY (Investigation Appeal window CFS026), within 5 business days. In the event that a finding is overturned, all references to the matter will be expunged from the Central Registry by changing the finding in UNITY to unsubstantiated.

**1202.5.5 Level Two – Child Welfare Administrative Review – Rural Region Manager, DCFS Deputy Administrator** (or Family Programs Office, Social Services Specialist III, designee).

An administrative file review of the Level One Appeal decision will automatically occur after submission for the Level Two Administrative Review.

**A. Appeal Action Process:**

The DCFS Rural Region Manager, Deputy Administrator or designee must complete a thorough review of the record and render a decision on the Level Two review within 15 business days of receipt of the Level One decision.

1. If the decision to substantiate is upheld upon the Level Two Review, the appeal will be forwarded to Level Three Appeal, Administrative Hearing,
2. If the decision to substantiate is upheld, the Rural Region Manager, Deputy Administrator or designee will send the letter titled, "*Results of Level Two Administrative Review and Notice of Determination to Uphold Substantiation*", via regular US Parcel Post and will enter the appeal outcome in UNITY (Investigation Appeal window CFS026), within 5 business days.
3. If the decision to substantiate is reversed, the Rural Region Manager, Deputy Administrator or designee will send the letter titled, "*Results of Level Two Administrative Review and Notice of Determination Amendment*", via regular US Parcel Post and will enter the appeal outcome in UNITY (Investigation Appeal window CFS026), within 5 business days. In the event that a finding is overturned, all references to the matter will be expunged from the Central Registry by changing the finding in UNITY to unsubstantiated.

**1202.5.6 Appeal Action Documentation:**

1. A statement regarding rationale for making the decision and the outcome of the appeal must be entered into UNITY (Investigation Appeal window CFS026).
2. All letters sent to the individual with regards to the finding and the Appeal process must be kept in the hard file.

**1202.5.7 Level Three – Fair Hearing:**

The DCFS Hearing Officer hears the appeal.

1. The Hearing Officer will afford an opportunity for a hearing after reasonable notice (pursuant to NRS 233B.121) in writing to all parties involved.
2. Unless the Hearing Officer finds good cause for an extension a hearing should be set within 3 months.
3. The Hearing Officer will conduct the Fair Hearing in accordance with established Fair Hearing Procedures in NRS 233B.
4. If the individual fails to appear at the hearing the Hearing Officer will formally adjourn the proceedings. The Hearing Officer will notify the individual that a written statement setting forth the reason(s) for the individual's failure to appear at the first scheduled hearing must be submitted to the Hearing Officer within 10 calendar days, if client wishes to proceed with the Fair Hearing process.
5. At the conclusion of the Fair Hearing, the matter shall stand submitted for decision. Within 30 calendar days after the hearing, the Hearing Officer shall mail a written decision / Findings of Fact / Conclusions of Law to the individual and the DCFS Administrator.
6. Pursuant to NRS 233B.130, should either party desire to appeal the Hearing Officer's final decision, a Petition of Judicial Review must be filed with the District Court within 30 calendar days after service of this decision by mail.

**1202.6 Decision Pending Review:**

The disposition reached by the Fair Hearing officer shall be deemed reasonable and lawful until reversed or set aside in whole or in part by a court of competent jurisdiction.

**1202.7 Supervisory Responsibility:**

Supervisors have the responsibility for ensuring notification of substantiated findings letters are sent out in a timely manner using the standardized form letters, see attachments.

### **1202.8 Special Circumstances:**

1. In the event that the individual who is the subject of the Appeal does not speak English, exhaustive efforts must be made to find an impartial interpreter to assist with the Appeal Process. The DCFS Rural Region Manager MUST be notified in all cases where no interpretation services are available.
2. Individuals/ Subjects of Reports, in which no documentation that they were afforded an Appeal Process exists or who have extenuating circumstances and can provide proof that an Appeal of prior substantiated child maltreatment findings should be considered, can also request an Appeal.

### **1202.9 Policy Cross Reference:**

- 0513 Substantiation Policy and Attachments
- 0516 Overturning Child Maltreatment Findings in UNITY / Central Registry
- 0507 Corporal Punishment Policy
- 0901 Institutional Abuse and Neglect Investigations

### **1202.10 Attachments:**

- FPO 1202A Investigation Results and Notice to Unsubstantiate
- FPO 1202B Investigation Results and Notice to Substantiate/Right to Appeal
- FPO 1202C Results of Level One Appeal, Substantiation Upheld
- FPO 1202D Results of Level One Appeal, Substantiation Overturned
- FPO 1202E Results of Level Two Appeal, Substantiation Upheld
- FPO 1202F Results of Level Two Appeal, Substantiation Overturned

### **To Access Due Process Windows Go To:**

- Person Directory – CFS008F
- Find Person
- Highlight Person
- Go to Individual Investigation History – CFS022
- Highlight Report
- Go to Due Process – CFS720C
- Double Click on Perpetrator
- Update Due Process Window – CFS7204