

1202.0 Notification of and Appeal of Substantiated Abuse and/or Neglect Findings for DCFS Rural Region

1202.1 Policy Approval Clearance Record

<input checked="" type="checkbox"/> DCFS Child Welfare Policy	This policy supersedes: DCFS 1202 Notification of an Appeal of Substantiated Abuse and/or Neglect Findings	Number of pages in Policy: 6
Review by Representative from the Office of the Attorney General:	Date: 12/30/2016	Date Policy Effective: 01/01/2017
DCFS Deputy Administrator Approval Signature:	Date: 12/30/2016	Policy Lead: Hayley Jarolimek, SSPS III

1202.2 Statement of Purpose

1202.2.1 Policy Statement: DCFS Rural Region will maintain an appeal policy in accordance with state and federal mandates that affords due process to individuals with a substantiated finding of child abuse and/or neglect.

1202.2.2 Purpose: In order to meet state and federal requirements, the agency must provide written notification of the intent to substantiate, the right to appeal and the method by which the decision may be appealed to the person subject to the substantiated finding of abuse and/or neglect. Therefore, the policy provides due process to individuals with a substantiation of child abuse and/or neglect an opportunity to have his/her case reviewed by the panel to refute the agency's case finding. Furthermore, it requires the agency to maintain the accuracy of the records maintained in the Central Registry.

1202.3 Authority

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

1202.4 Definitions

1202.4.1 "Abuse or neglect of a child": (NRS 432B.020)

- A.** "Abuse or neglect of a child" means, except as otherwise provided in subsection 2:
- 1.** Physical or mental injury of a non-accidental nature;
 - 2.** Sexual abuse or sexual exploitation; or
 - 3.** 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.
- B.** A child is not abused or neglected, nor is the health or welfare of the child harmed or threatened for the sole reason that:

1. 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
 2. 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. This paragraph does not limit the court in ensuring that a child receive a medical examination and treatment pursuant to NRS 62E.280.
- C. 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 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.

1202.4.3 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.

1202.4.4 Child Welfare Services Agency: (NRS 432B.030)

- A. In a county whose population is less than 1000,000 the local office of the DCFS;
- B. 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.

1202.4.5 Impartial Designee: 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: Social Services Manager, Social Services Chief, Social Services Specialist with CPS knowledge, Rural QA Unit Social Work Supervisor, or the Deputy Administrator for DCFS can be considered impartial designees.

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 Person Responsible for the Child's Welfare (NRS 432B.130): The child's parent, guardian, stepparent with whom the child lives, an adult person continually or regularly found in the same household as the child, a public or private home, institution or facility where the child actually resides or is receiving care outside of the home for all or a portion of the day, or a person directly responsible or serving as a volunteer for or employed by such a home, institution or facility.

1202.4.9 Rural Region CPS Appeals Panel: A Panel, defined as a small group of people brought together to review appeal requests. The individuals, in compliance with CAPTA, may not have any other involvement in the case being reviewed on appeal. The panel should be comprised of three (3) individuals such as a Social Services Manager, a Social Services

Chief and a Social Services Specialist with CPS knowledge, skills, or experience. The panel has the authority to overturn a substantiated finding of abuse and/or neglect.

1202.4.10 **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)).

1202.4.11 **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 **Notification of Investigation Outcome and Appeal Process:** Upon completion of an investigation, the caseworker will submit the investigation findings and notification letter for supervisory approval. Once the investigation findings are approved, the supervisor will sign and send out the notification letter, within 5 business days of the findings. Supervisors have the responsibility of ensuring notification of findings letters are sent out in a timely manner. DCFS applies a preponderance of evidence standard.

- A. If the investigation results in a lack of preponderance of evidence to substantiate child abuse and/or neglect, the caseworker will complete the *'Investigation Results and Notice to Unsubstantiate'* letter and send via regular US Parcel Post to the subject of the substantiated report.
- B. If preponderance of evidence exists to support an allegation of substantiated child abuse and/or neglect, the caseworker will complete the *'Investigation Results and Notice to Substantiate/Right to Appeal'* letter and send it to the subject of the substantiated report via certified US Parcel Post, with return receipt requested. The subject of the substantiated report must submit an appeal request post-marked within 15 business days after the date on which the *'Investigation Results and Notice to Substantiate/Right to Appeal'* letter was sent, the person's name will not be entered in the Central Registry until the appeal process is completed and the substantiation is upheld.
- C. If an allegation is substantiated, and the person does not submit an appeal within 15 business days from the *'Investigation Results and Notice to Substantiate/Right to Appeal'* letter, the person's name will be entered in the Central Registry with substantiated finding of child abuse and/or neglect.

1202.5.2 **Level One – Rural Region CPS Appeal Panel:** The Rural Region CPS Appeal Panel (Panel) reviews cases being appealed due to a substantiated finding. The Panel may review case notes, case documentation, photographs, reports, etc. and any additional evidence provided by the agency and/or the subject of the substantiated report to support or refute the case finding.

- A. Upon completion of file review, the Panel may, as necessary, organize a discussion with the caseworker and/or the supervisor to obtain more information and to resolve any unanswered questions.
- B. A meeting may be scheduled with the subject of the report and any other individuals the subject requests to be heard (family member, attorneys, etc.) to provide additional information, if necessary. The Panel assessing the Appeal will resolve any specific concerns or conflicts regarding attendees.

- C. The Panel may review and consider any additional information or evidence that either party submits.
- D. The Panel shall meet and decide to uphold or overturn the decision to substantiate.
- E. Determination made by the Panel will be mailed to the subject of the substantiated report within 45 business days of receipt of the request of the appeal.
- F. If the decision to substantiate is upheld, the Panel or designee will send the letter titled, *"Results of Level One Child Welfare Agency Appeal to Uphold Substantiation,"* via US certified mail. The letter provides instructions for requesting an Administrative Review Hearing with the DCFS Hearing Officer.
- G. If the decision to substantiate is reversed, the Panel or designee will send the letter titled, *"Results of Child Welfare Agency Appeal and Notice of Determination Amendment"* via regular US Parcel Post.

1202.5.3

Level Two – Administrative Fair Hearing: The DCFS Hearing Officer conducts the Administrative Fair Hearing. The disposition reached by the DCFS Hearing Officer shall be deemed reasonable and lawful until reversed or set aside in whole, or in part, by a court of competent jurisdiction.

- A. At the request of the subject of the substantiated report, when an Administrative Fair Hearing is requested, the DCFS Hearing Officer will:
 - 1. Conduct the Fair Hearing in accordance with established Fair Hearing Procedures in NRS 233B; and
 - 2. Afford an opportunity for a hearing after reasonable notice, pursuant to NRS 233B. 121, in writing to all parties involved.
- B. Unless the DCFS Hearing Officer finds good cause for an extension, a hearing should be set within 3 months.
- C. If the subject of the substantiated reports fails to appear at the hearing the DCFS Hearing Officer will formally adjourn the proceedings. If after 10 days, a written request to reschedule the hearing has not been received, the hearing officer will issue a formal decision.
- D. At the conclusion of the Administrative Fair Hearing, the matter shall stand submitted for decision. Within 30 calendar days after the hearing, the DCFS Hearing Officer shall mail the written Decision / Findings of Fact / Conclusions of Law to the subject of the substantiated report, attorney of record and the DCFS Administrator via certified mail.
- E. Pursuant to NRS 233B.130, should either party desire to appeal the DCFS 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 Appeal Documentation:

1202.6.1

Appeal Documentation in UNITY: A statement specifying the factors that contributed to the decision to uphold or overturn the substantiated finding and the outcome of the appeal must be entered into UNITY (Investigation Appeal Window, CFS026 and Due Process Window, CFS7204) by the Rural QA Unit Social Work Supervisor responsible for the case.

1202.6.2

Appeal Documentation in Case Files: All finalized correspondence and certified mailing receipts must be kept in the hard files with the originals being sent to the Rural Region for purposes of file maintenance.

1202.7 Requesting an Appeal:

1202.7.1 Circumstances for Requesting an Appeal: The subject of the substantiated report may appeal the agency's decision to substantiate child abuse and/or neglect if he/she:

- A. Disagrees with the agency's assessment finding and case substantiation;
- B. Believes that the agency failed to act within specified standards outlined by the State or the agency's policies and regulations;
- C. Was involved in a substantiated case prior to the establishment of the review and appeal process; or
- D. Can provide proof that he/she was not afforded due process rights for an appeal on a prior substantiated child abuse and/or neglect finding.

1202.7.2 Process for Requesting and Appeal

- A. The subject of the substantiated report must submit a request in writing for an appeal to DCFS.
- B. The subject of the substantiated report must provide the Panel/DCFS Hearing Officer with any additional, relevant documentation to support his/her case.

1202.8 Special Circumstances:

1202.8.1 In the event that subject of the substantiated report 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.

1202.9 Stay of Appeal Pending 432B Court Hearing

1202.9.1 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. The purpose of the stay is to comply with NRS 432B.317 (3) which require the stay of the administrative appeal pending the court hearing. The hearing process before the court provides the subject of the substantiated report with the due process right to notice and an opportunity to be heard before a substantiated finding is entered into the Central Registry. Therefore, if the court upholds a petition of abuse or neglect, a substantiated finding is entered into the Central Registry.

1202.9.2 UNITY Window (CFS 720U) as follows:

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

or neglect by a person legally responsible for their care. Result: agency substantiation overturned.

1202.10 Central Registry Expungement:

Pursuant to NRS 432B.120, case information pertaining to a substantiated case will be maintained in the Central Registry no later than 10 years following the alleged child victim's 18th birthday. Expungement of the substantiation in the Central Registry does not expunge the case history or substantiated finding from the SACWIS (UNITY) system.

1202.11 Policy Cross Reference:

0513 Substantiation Policy and Attachments
0516 Overturning Child Abuse and/or Neglect Findings in UNITY / Central Registry
0507 Corporal Punishment Policy
0901 Institutional Abuse and Neglect Investigations
0517 Sealing of Records Located in the Central Registry

1202.12 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