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Manual Transmission Letter (MTL)
Family Programs Office: Statewide Child Welfare Policy Manual

MTL # 0513-10122018

10/12/2018

TO: Timothy Burch, Administrator - Clark County Department of Family Services
Betsey Crumrine, Social Services Manager V - DCFS – District Offices
Amber Howell, Director - Washoe County Human Services Agency

FROM: Reesha Powell, Deputy Administrator, Division of Child and Family Services

POLICY DISTRIBUTION:

Enclosed find the following policy for distribution to all applicable staff within your organization:

- 0513 Substantiation

This policy is/was effective: 9/19/2018

This policy is new. Please review the policy in its entirety

This policy replaces the following policy(s): MTL # _____ - _____ Policy Name: _____

This policy has been revised. Please see below for the type of revision:

This is a significant policy revision. Please review this policy in its entirety.

This is a minor policy revision: (List page number & summary of change):

- Policy was changed to incorporate preponderance of evidence and remove credible evidence. The definitions have also been updated to include this change and for unification of definitions.

A policy form has been revised: (List form, page number and summary of change):

- _____

NOTE:

- Please read the policy in its entirety and note any areas that are additionally required by your agency to be in compliance with the policy enclosed.
- This is an **All STAFF MEMO** and it is the responsibility of the person listed above to disseminate the policy enclosed to appropriate staff within his/her organization and to ensure compliance.
- The most current version of this policy is posted on the DCFS Website at the following address: <http://dcfs.nv.gov/Policies/>. Please check the table of contents on this page for the link to the chapter you are interested in.

0513.0 Substantiation

0513.1 Policy Approval Clearance Record

Check one only: <input type="checkbox"/> State Policy <input checked="" type="checkbox"/> Collaborative Policy	This policy supersedes: 200 Substantiation Policy (DMG approved 8-30-2005); Updates 4/23/2010	Number of pages in Policy: 7 Date Policy Effective: 09/19/2018
PART Recommendation Date:		Policy Lead:
DMG Approval Date:	09/19/2018	Policy Lead:
Review by Representative from the Office of the Attorney General:		Signature: N/A
DCFS Administrator Approval:	09/19/2018	Signature: None required

0513.2 Statement of Purpose

- 0513.2.1 Policy Statement:** The results of an investigation culminate in the determination or finding of child abuse or neglect as substantiated or unsubstantiated based on the preponderance of evidence that supports the allegation/s.
- 0513.2.2 Purpose:** The purpose of this policy is to provide a consistent statewide framework for how evidence of abuse or neglect will be considered in making findings of child abuse and neglect.

0513.3 Authority

NRS 432B.010, .150, .300, .330, .340, .370
 NAC 432B.150, .160, .170

0513.4 Definitions

0513.4.1 Abuse or Neglect of a Child:

- A.** "Abuse or neglect of a child" means, except as otherwise provided in subsection 2 of NRS432B.020:
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 his welfare 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 his health or welfare harmed or threatened for the sole reason that his:
1. Parent 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. Parent or guardian, 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.

- 0513.4.2 Administrator:** The Administrator of the Division of Child and Family Services (DCFS).
- 0513.4.3 Agency Substantiation:** The investigative determination of an agency which provides child welfare service.
- 0513.4.4 Agency which provides child welfares services:** A county whose population is less than 100,000, the agency is a local office of the Division of Child and Family Services; or in a county whose population is 100,000 or more, the agency of the county, which provides or arranges for necessary child welfare services. May also be referred to as “Agency” or Child Welfare Agency”.
- 0513.4.5 Credibility:** The quality that makes something (as a witness or some evidence) worthy of belief.
- 0513.4.6 Evidence:** Something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact.
- 0513.4.7 Mental injury:** An injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the child’s ability to function within the child’s normal range of performance or behavior (NRS 432B.070).
- 0513.4.8 NAC:** Nevada Administrative Code (regulations promulgated by the Nevada Revised Statutes).
- 0513.4.9 Negligent treatment or maltreatment:** If a child has been abandoned, is without proper care, control and supervision or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for his welfare or his neglect or refusal to provide them when able to do so (NRS 432B.140).
- 0513.4.10 NRS:** Nevada Revised Statutes (as enacted by the Nevada Legislature).
- 0513.4.11 Physical injury:** Includes, without limitation (NRS 432B.090):
- A. A sprain or dislocation;
 - B. Damage to cartilage;
 - C. A fracture of a bone or the skull;
 - D. An intracranial hemorrhage or injury to another internal organ;
 - E. A burn or scalding;
 - F. A cut, laceration, puncture or bite;
 - G. Permanent or temporary disfigurement; or
 - H. Permanent or temporary loss or impairment of a part or organ of the body.
- A non-accidental physical injury to a child including but not limited to, sprains, dislocations, damage to cartilage, bone fractures, intracranial hemorrhage, injury to an internal organ, burns, cuts, lacerations, puncture wounds, bites, permanent or temporary disfigurement, and permanent or temporary loss or impairment of a part of a child’s body.
- 0513.4.12 Preponderance of evidence:** The standard of proof in most civil cases in which the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.
- 0513.4.14 Relevant Evidence:** Evidence tending to prove or disprove a matter in issue.
- 0513.4.15 Sexual abuse:** Includes acts upon a child constituting (NRS 432B.100):

- A. Incest (NRS 201.180);
- B. Lewdness with a child (NRS 201.230);
- C. Sado-masochistic abuse (NRS 201.262);
- D. Sexual assault (NRS 200.366);
- E. Statutory sexual seduction (NRS 200.368);
- F. Open or gross lewdness (NRS 201.210); and
- G. Mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child, or removal of a female child from this State for the purpose of mutilating the genitalia of the child (NRS 200.5083).

0513.4.16 Sexual exploitation: Includes forcing, allowing or encouraging a child (NRS 432B.110):

- A. To solicit for or engage in prostitution;
- B. To view a pornographic film or literature; and
- C. To engage in:
 - 1. Filming, photographing or recording on videotape; or
 - 2. Posing, modeling, depiction or a live performance before an audience, which involves the exhibition of a child's genitals or any sexual conduct with a child, as defined in NRS 200.700.

0513.4.17 State: An alternate word for the Division of Child and Family Services (DCFS) and Family Programs Office (FPO).

0513.4.18 Substantiated: A report made pursuant to NRS 432B.220 was investigated and that the preponderance of evidence of the abuse or neglect. (NAC 432B.170(7)(a) requires credible evidence; however, agencies are maintaining a stricter guideline with preponderance of evidence).

0513.4.19 Unsubstantiated: A report made pursuant to NRS 432B.220 was investigated and that the preponderance of evidence is not supportive of the abuse or neglect. 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 prove because it was unable to locate the child or the person responsible for the welfare of the child (NAC 432B.170(7)(b) requires credible evidence; however, agencies are maintaining a stricter guideline with preponderance of evidence).

0513.5 Procedures

Investigative findings are decisions about whether reports are substantiated or unsubstantiated. Findings include which, if any, allegation(s) are to be substantiated. A report can comprise one or many allegations and each allegation may have a different finding. Investigative findings also include the identity of the perpetrator(s) for specific allegations that are substantiated. Investigative findings are made by the child welfare investigator and supervisor on the basis of the evidence that has been gathered during the investigation. An allegation is unsubstantiated when there is not a preponderance of evidence that supports child abuse or neglect has occurred.

When the investigative worker has completed all investigative contacts, has observed relevant physical evidence (e.g. any marks on the alleged victim, the environment where the abuse/neglect allegedly took place, any objects used), and has obtained relevant documentation, (e.g., police or medical reports) the investigator shall make a finding of substantiated or unsubstantiated. This finding shall be based upon whether the information gathered during the investigation and from direct observations made by the CPS investigator constitutes that the preponderance of evidence exists and supports that child abuse or neglect occurred.

0513.5.1 Determining whether child maltreatment has occurred requires careful examination of all the information obtained during the CPS investigation / assessment process.

- A. Types of Evidence:** The CPS investigator supervisor will use two types of evidence to support an investigative finding:
- 1. Direct Evidence:** Direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without interference or presumption. An example of direct evidence is a statement taken from an eyewitness or information provided by an expert; someone with special knowledge, skill, experience or training on the subject matter at hand.
 - 2. Indirect or Circumstantial Evidence:** Indirect or circumstantial evidence is evidence based on inference and not on personal knowledge or observation. It is all evidence that is not given by eyewitness testimony. For example, circumstances infer that a child's caregiver is the perpetrator of abuse when a child is diagnosed with shaken baby syndrome has not been out of the care and custody of the caregiver.
- B. Determining Credibility:** In making an investigative finding, the child welfare caseworker and supervisor must evaluate the evidence to determine its credibility. This assessment process must be documented in Nevada Initial Assessment Conclusion (see 0509 NIA policy). Factors affecting the credibility of all evidence include, but are not limited to, the following:
- 1. Corroborating Evidence:** This is evidence that differs from but strengthens or confirms what other evidence shows. Corroborating evidence can make other evidence more credible by providing verifying information or by providing support from independent sources. For example, a mother's statement that a physician has seen her child is made far more credible when the physician (corroborating witness) verifies that he/she has seen the child. Another example is a child's statement that he/she was hit by an extension cord. If, by examining the child's back, the Investigator observes linear loop marks, these marks are considered corroborating physical evidence.
 - 2. Direct vs. Indirect Source of Information:** The more direct the source of the information is, the more credible the source's opinion may be. For example, a physician rendering an opinion based on a review of medical records is more credible than one rendering an opinion based on a caseworker's description of an injury. A physician rendering an opinion based on his/her direct physical evaluation is more credible still. Similarly, information that a child directly tells a teacher may be more credible than information that a child tells his/her friend, who tells another friend, who tells the teacher.
 - 3. Direct Interest/Motivation:** Information from a source who has something to lose or gain from a particular investigative outcome may be less credible than information from one who has no direct interest in providing an account that may not be accurate. The caseworker needs to consider the possible motivations of the source when evaluating the credibility of that person's statement. This may mean asking questions regarding the history between the source and the alleged perpetrator or the family. For example, a neighbor who has had no previous relationship with the family and who reports that the young children have been left alone is more credible than a neighbor who has been feuding with the family and makes the same report.
- C. Adults Named as Alleged Perpetrators:** Adults named as alleged perpetrators of abuse or neglect often want to present themselves in the best possible light during the investigation. Self reports concerning possible safety/risk concerns are likely to be denied or minimized by alleged perpetrators such as:
- 1. Alleged perpetrators' use of alcohol/drugs.**
 - 2. The extent to which a parent/caregiver uses objects when disciplining children.**

3. Involvement in domestic violence.
 4. The extent and nature of a relationship with a paramour/convicted sexual offender.
 5. Relationships with extended family members, such as reasons for estrangement or infrequent contact.
- D. Using Evidence to Reach an Investigative Finding: The final step in determining whether child abuse/neglect reports will be substantiated or unsubstantiated is to consider all information obtained during the investigation and determine which information is relevant to be used as evidence to make a finding. It is important that all evidence suggesting that an incident of abuse or neglect did not occur be given the same consideration as evidence suggesting that an incident of abuse or neglect did occur. All investigative findings require the approval of the CPS Supervisor.
1. Unsubstantiated Finding: If it is determined that the evidence is not sufficient to lead a reasonable person to believe that the alleged incident occurred or that the alleged set of circumstances is or was present, the report must be unsubstantiated.
 - The following should not be used as the sole basis for determining a report to be unsubstantiated:
 - Intent to Harm the Child: The alleged perpetrator's intent to hurt a child, leave a mark, or endanger him by leaving him alone in a car is not a factor to be considered in making a finding. Abuse/neglect occurs when a child is significantly harmed by non-accidental means without regard to the perpetrator's intent.
 - Isolated Incident: While the chronic nature of an incident or set of circumstances is a factor to be considered in some allegations, the fact that an act of abuse or neglect was an "isolated incident" is not a basis for making a finding that the report is unsubstantiated. The incident must be evaluated giving greater weight to the other factors.
 - Agreement to Accept Services: The fact that a perpetrator agrees to receive services (or is already receiving them) has no bearing on the decision to substantiate or unsubstantiate an allegation. The investigative finding must be based upon the incident that occurred. Treatment is relevant to the safety and risk assessments, but not to the investigative finding. For example, a report involving a mother who hit a 2-year-old in the face with a belt should not be unsubstantiated simply because she is getting anger-management counseling.
 - Economic Status or Neighborhood: Investigative decisions must never be influenced in any way by a family's economic status or by the condition of the neighborhood in which they live. The fact that a family is wealthy or that they live in an affluent neighborhood plays no part in decisions to indicate or unsubstantiated reports.
 - Attitude Toward the Worker: The attitude family members express toward the CPS Investigator must not influence any investigative decisions. Reports must never be unsubstantiated because the family is compliant, agreeable, or cooperative with the worker.
 2. Substantiated Finding: A substantiated finding occurs when a report made pursuant to NRS 432B.220 is investigated and the preponderance of evidence supports the alleged abuse or neglect.
 - The following may not be used as the sole basis for determining a report to be substantiated:
 - The Family's Need for Services: The decision to substantiate must be based on evidence and not used as a way to get services to a family. Services can be provided to families whose reports are unsubstantiated.

- **Failure to Accept Services:** Decisions about investigative findings are separate from those concerning service provision. A family’s refusal to accept services may be related to decisions about Court intervention but not to the decision about substantiation.
- **Economic Status or Neighborhood:** Investigative decisions must never be influenced in any way by a family’s economic status or by the condition of the neighborhood in which they live. The fact that a family is poor or that they live in a disadvantaged neighborhood plays no part in decisions to substantiate or unsubstantiate reports.
- **Attitude Toward the Worker:** The attitude family members express toward the worker must not influence investigative findings. Reports must never be substantiated because the family is argumentative, hostile, or uncooperative with the worker.

E. Notifications of the Investigative Finding: Each child welfare agency must follow their agency policy regarding notification of substantiated findings to include; that substantiated findings will be entered into the Central Registry and notification of the perpetrator’s right and process to appeal substantiated finding(s).

0513.5.2 Timelines:

Table 0513.1: Timelines for 0513 Substantiation

Requirement	Deadline	Starting Date	Responsible Party	Actions to be Taken
Complete the Nevada Initial Assessment	45 days from investigation initiation	Date of report	Child Welfare Caseworker	Substantiated or Unsubstantiated finding recorded in UNITY

0513.5.3 Forms: N/A

0513.6 Child Welfare Agency Action

0513.6.1 Development of Internal Policies: Each child welfare agency may develop additional internal agency guidelines for substantiating abuse or neglect.

0513.6.2 Timelines: N/A

0513.6.3 Tools & Forms: N/A

0513.6.4 Documentation: Child maltreatment findings are solely documented in UNITY.

A. Case File Documentation (paper): N/A

B. UNITY Documentation (electronic):

Table 0513.2: UNITY Documentation for Policy 0513 Substantiation

Applicable UNITY Screen	Data Required
CFS 048 Investigation Allegation Findings	Date Investigation is complete

0513.6.5 Supervisory Responsibility: It is the CPS Supervisor’s responsibility to provide oversight to investigative activities to assure timely and efficient CPS investigation / assessment process that complies with procedural requirements and good practice. Supervisors must review all child safety assessments and safety plans, risk assessments and investigative findings recommended by the CPS Investigators for approval and in doing must assure that investigations are conducted and documented in compliance with state and agency policy and procedural requirements.

0513.7 State Responsibilities

0513.7.1 Participants in Policy Development

- A. **FPO Staff:** CAPTA, Child Fatality and Child Welfare Policy Specialists
- B. **Child Welfare Agency Representatives:** Child Welfare Agency Managers, Staff and Legal Representation
- C. **External Stakeholders:** Deputy Attorney General

0513.7.2 Technical Assistance

- A. Technical Assistance Receive: N/A
- B. Resources: N/A

0513.7.3 Clearance Process

Table 0513.3: Policy Clearance History

Policy Name & MTL Number	Workgroup Name & Review Dates	DAG Recommendation Date	PART Final Recommendation Date	DMG Final Approval Date	DCFS Admin. Approval Date	Effective Date
0513-000000	Substantiation Workgroup met approximately 6-8 times between September 2008- February 2010	02/18/10	04/07/10	04/23/10	04/23/10	04/23/10
0513-111505	unknown	09/26/05	NA	08/30/05	08/30/05	11/15/05

0513.7.4 Policy Impact: N/A

0513.8 Policy Cross Reference

0509 Nevada Initial Assessment

0513.9 Attachments:

N/A