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## MEMORANDUM

**TO:** Criminal Records Review Committee

**FROM:** John Feeney, Chief Operating Office, Office of Child and Family Services

**DATE:** October 28, 2021

**SUBJECT:** Office of Child and Family Services (OCFS) Findings Process

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Every child abuse/neglect investigation conducted by OCFS staff results in one of three findings outcomes: a **substantiated** finding of abuse and/or neglect, an **indicated** finding of abuse and/or neglect, or **unsubstantiated** findings. There four different types of substantiations and indications:

- Substantiated or indicated physical abuse
- Substantiated or indicated emotional abuse
- Substantiated or indicated neglect
- Substantiated sexual abuse

The definition of each abuse type is located in OCFS' [Child and Family Policy](#) (IV.D-1. Child Abuse and Neglect Findings Policy). In order to be substantiated or indicated the definition of "person responsible for a child" as defined in [22 MRS §4002 must be met](#). Indicated findings are for low to moderate severity abuse or neglect and substantiated findings are considered high severity.

Pursuant to statute ([22 MRS §4008](#)), if an investigation results in a finding of unsubstantiated then the records are retained for five years unless a new report is received during the five-year retention period.

Individuals who are substantiated or indicated receive a letter from the Department notifying them of the finding(s) made against them. Each individual case is different, and an individual may be substantiated or indicated for more than one abuse type or severity and more than one child depending on the circumstances, facts, and evidence gathered during the investigation.

Both substantiated and indicated findings and the records associated with the investigation remain in OCFS' records permanently. A substantiated finding results in the individual being placed on **Maine's Child Abuse Registry**. This may disqualify an individual from holding certain positions that involve caring for children and vulnerable or incapacitated adults.

Employers may only search the Registry with a signed release from the individual that authorizes them to conduct such a search. No details regarding the substantiated finding are released, only a statement regarding whether the individual has been substantiated. Indicated findings are not released in response to a Child Abuse Registry check.

The letter notifying an individual of a finding includes information on the effect of findings and the individual's right to **appeal** the finding. Appeals are governed by rule [10-148, Chapter 201](#). There are two levels of appeals, **paper review** and **hearing**. A paper review is a review of all the records gathered during the investigation, as well as anything additional submitted by the appellant for the review. These reviews are conducted by OCFS staff members whose positions are outside of child welfare. Currently, if an indicated finding is upheld at paper review, that is the end of the appeals process. If a substantiated finding is upheld at paper review the appellant can request a hearing regarding the finding. These hearings are held before Hearing Officers from the Department's Administrative Hearing Unit. After the hearing has concluded, the Hearing Officer makes a written recommendation to the Commissioner regarding the finding and the Commissioner makes the final decision to uphold or overturn the finding.

There is an important exception to the appeals process. If the appellant is or becomes a party to certain court proceedings, they are **ineligible** to appeal until the conclusion of that case. These court proceedings include a child protective case, any civil proceeding where there is a factual issue of whether or not the appellant subjected the child to abuse or neglect, and any criminal proceeding in which the appellant is charged with conduct substantially similar to that upon which the Department based its finding. If the child protective case results in a jeopardy finding, the civil case results in a finding that the appellant did subject the child to abuse or neglect, or the individual is convicted of or pleads guilty to criminal charges related to the substantially similar conduct, then the Department defers to the court's finding and the appellant is permanently ineligible to appeal. If the court case concludes without any of these results, then the appeal may proceed after the court case has concluded.

Records regarding investigations that have not been expunged pursuant to statute are used by the Department in future interactions with families, as well as by staff when licensing resource family homes and placing children with relatives. In addition, if the Department receives a Clifford Order from the Court to produce an individual's DHHS records in a civil or criminal proceeding, records regarding previous investigations may be released to the Court.