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Authorized Signature: Trenee Parker, DFS Director <i>Trenee Parker</i>	

## **POLICY 1501 –CHILD PROTECTION REGISTRY, SUBSTANTIATIONS, AND NOTIFICATIONS**

### **A. POLICY**

Protecting children is this agency’s primary purpose and mandate. Recording substantiations on the centralized Child Protection Registry is an essential function of the agency, undertaken to ensure the safety of children. Several core principles guide this work, including: due process, rigorous standards of agency accountability, compliance with all relevant statutes and regulations, and confidentiality.

### **B. PROCEDURES**

#### **1. Notification Letters**

- a. At the conclusion of an investigation, the Division shall send written notice to the investigated person of its intent to place the individual on the Child Protection Registry for having committed child abuse or neglect. The notice shall advise the person of the opportunity to request a hearing in Family Court and shall be sent to the person’s last known address by both certified mail, return receipt requested and by First Class U.S. mail.
- b. Each person the Division intends to enter on the Child Protection Registry shall receive his or her own investigation outcome letter, providing notice of the Division’s intent to substantiate them. This includes married and unmarried partners, when the Division intends to substantiate both parties, and minors
- c. When determining the presumptive Child Protection Level, the Division’s investigative staff shall consider all Regulations, pursuant to 16 Del.C. Ch. 9, for the designation of substantiated acts of abuse or neglect to Child Protection Levels and for classifying unsubstantiated cases of abuse or neglect in the Division of Family Services’ internal information system.
- d. Investigation staff may recommend a Child Protection Level that differs from the presumptive level in the Regulations if, after examining mitigating and aggravating factors and the risk of future harm, the totality of the circumstances support a different level. Consideration of these factors must be documented through use of the Mitigating/Aggravating Circumstances Checklist, which is then forwarded to the DOJ with the Request for Substantiation packet and scanned as an attachment into FOCUS. The Finding event in FOCUS should be completed and/or modified to reflect the actual recommended level.

#### **Mitigating Circumstances**

- No physical/emotional injury to child OR minor injury to child occurred in caregiver’s attempt to protect others in the home
- During DV incident with child in the home, child not impacted due to being too young, or child did not see or hear the DV incident (i.e. present but sleeping)
- Victim is older child who can protect him/herself from harm

- Significant length of time since caregiver's last child abuse/neglect incident
- Caregiver displayed remorse/cooperation/changed behaviors
- Protective steps implemented by caregiver that would prevent a future incident
- Proximity of age in victims engaging in sexual conduct
- Younger child (under age 14) who commits act of sexual abuse
- Compliance with DFS case plan or Court-ordered treatment or another Division-approved service

**Aggravating Circumstances**

- Egregious circumstances exist which are likely to result in bodily injury/death (i.e. weapon involved)
  - Child victim suffered serious physical injury
  - Caregiver engaged in similar conduct before/after the incident (substantiated DFS history or criminal history)
  - Unsubstantiated prior DFS history in which caregiver was warned about similar conduct
  - Long term or untreated substance abuse (assuming abuse/neglect caused by same)
  - Treatment of child victim in demeaning or degrading manner
  - Untreated medical or mental health issues that impair caregiver's ability to protect
  - DV involving physical assaults, stalking, or cruelty to animals, in which child is present
  - Victim is very young, old, or vulnerable
  - Victim is a child who is disabled or has special needs
  - Caregiver is uncooperative with DFS
  - Caregiver's abuse/neglect of child had a significant impact on the child's emotional well-being (i.e. child is suicidal/homicidal as a result of the abuse/neglect)
- e. The Child Protection Registry shall only contain substantiated incidents of child abuse and neglect. The registry shall not include cases substantiated for dependency, parent/child conflict, adolescent problems, or cases opened for risk of child abuse and neglect.
- f. At the conclusion of an investigation in which dependency has been substantiated but not abuse or neglect, the Division shall send written notice by both certified mail, return receipt requested, and by First Class U.S. mail to the person's last known address. Since the substantiated person will not be entered on the Child Protection Registry, he or she will not be eligible for a hearing in Family Court. The Hearing Request Form shall not be included with the outcome letter. However, the person is eligible for a Fair Hearing before a contracted Hearing Officer, if Family Court has not made a determination of dependency without abuse or neglect.
- g. During an investigation in which the Division has filed a Petition for Custody as a result of an incident of abuse or neglect, if the Division knows that it intends to substantiate the same respondent(s) named in the custody petition, the Division shall request that the Deputy Attorney General amend the custody petition prior to the adjudicatory hearing to request a finding regarding substantiation and entry at one of the Child Protection Levels. By law, Family Court has the ability to make a determination about substantiation during a child welfare proceeding, and a separate petition and hearing are not required.
- h. The Division must make a good faith effort to confirm the last known address of the person it intends to substantiate. If a certified letter is not picked up at the Post Office,

but the First Class letter has not been returned, it is assumed that the First Class letter was received and notification was achieved. When both the certified letter and the First Class letter are returned to the Division, the Division is required to publish notification in a newspaper of general circulation that the Division intends to place the perpetrator on the Child Protection Registry. The format for publication is located in the Substantiation Folder (Post 2/1/03 Events) on the Division's U drive.

- i. When the Division intends to substantiate, but the perpetrator's whereabouts are unknown, the Division will publish in a newspaper of general circulation that the Division intends to place the perpetrator on the Child Protection Registry. The format for publication is located in the Substantiation Folder (Post 2/1/03 Events) on the Division's U drive.
- j. When the Division intends to substantiate a minor, the Notice of Intent to Substantiate salutation and envelope should include both the parent/custodian name(s) and the name of the alleged child perpetrator.
- k. A parent/custodian with whom the child has primary residence shall receive a "Letter to Inform Parent/Custodian About Abuse/Neglect" to inform the parent/custodian that abuse or neglect of the child in their care was substantiated. This will enable the parent/caretaker to seek appropriate treatment for the child if needed. The parent/custodian does not have a right to appeal the finding on behalf of a child victim.
- l. The primary, secondary, and tertiary findings should be stated in the notification letter. The primary finding is always the highest Child Protection Level. The primary finding is the finding that is put on the Registry. When two findings are on the same Level, the primary finding should always be the more severe matter.

## **2. Types of Notification Letters**

- a. Notice of Intent to Substantiate— When the Division intends to substantiate an incident of child abuse/neglect, a notice shall be sent for the appropriate level the Division intends to substantiate.
- b. Notice of Intent to Substantiate, Charge Pending – When the Division intends to substantiate an incident of child abuse/neglect, but a charge is pending regarding the same incident the Division investigated, a notice shall be sent for the appropriate level the Division intends to substantiate.

Note: When a criminal finding for the same incident the Division investigated becomes known subsequent to the case disposition, the Substantiation Hearing Coordinator will notify the caseworker to send a Criminal Conviction Based on Same Child Abuse and Neglect Incident letter. The Registry start date in FOCUS should be the same date as the criminal conviction/plea date.

- c. Notice of Intent to Substantiate, Criminal Conviction Based on Same Child Abuse and Neglect Incident – This letter shall be sent when a criminal conviction has been made by plea or by trial prior to the conclusion of the Division's investigation. A Hearing Request Form shall not be sent with this letter. However, the letter should provide information regarding the person's right to file a Petition for Limited Purpose Hearing in Family Court. The letter shall be sent by certified mail, return receipt requested, and by First Class U.S. mail.
- d. Notice of Intent to Substantiate, Dependency (No Abuse/Neglect) – This letter shall be sent when the Division has investigated and substantiated dependency, but there has been no finding of abuse or neglect. The letter contains the right to appeal to a

- contracted Fair Hearing Officer. A Hearing Request Form shall not be sent with this letter. The letter shall be sent by both certified mail, return receipt requested, and by First Class U.S. mail.
- e. Notice of Intent to Substantiate, Dependency, Family Court Determination (No Abuse/Neglect) – This letter shall be sent when Family Court has issued an order of dependency without also making a finding of abuse or neglect prior to the conclusion of the investigation. A Hearing Request Form shall not be sent with this letter since due process was provided by Family Court. The letter shall be sent by First Class U.S. mail.
  - f. Letters to Minor Perpetrators (Charge Pending/Civil Outcome/Criminal Conviction)— Using the appropriate letter for the registry level, this letter shall be sent when the Division has investigated and intends to substantiate a minor for an incident of child abuse/neglect. The letter must be addressed to the minor perpetrator and his or her parents. The letter must NOT be sent to parents whose parental rights have been terminated. Because the Division automatically files a Petition to Substantiate in Family Court in all cases of minor perpetrators, no Hearing Request Form shall be sent with the letter. The letter shall be sent by both certified mail, return receipt requested, and by First Class U.S. mail.
  - g. No Evidence to Substantiate, Case Closed – This letter shall be sent when the Division has investigated and found no evidence to substantiate, no concerns, and no risk. The letter shall be sent by First Class U.S. mail.
  - h. Unsubstantiated with Concern, Case Closed – This letter shall be sent when the Division has investigated and identified concerns, but determined the children are not at risk. The letter shall be sent by First Class U.S. mail.
  - i. Unsubstantiated with Concern, Case Opened for Risk – This letter shall be sent when the Division has identified concerns and determined that the children are at risk. The letter shall be sent by First Class U.S. mail. DFS will provide the treatment services.
  - j. Unsubstantiated with Concern, Case Opened for Risk, Perpetrator Not Known – This letter shall be sent when the Division has determined that the child has been abused or neglected, but the perpetrator has not been confirmed through investigation. If the perpetrator becomes known, the Division shall send the appropriate Notice of Intent to Substantiate with Hearing Request Form and change the finding in FOCUS. The letter shall be sent by First Class U.S. mail.
  - k. Unsubstantiated with Concern, Case Active in Treatment – This letter shall be sent when the Division completes its investigation of a case active in Treatment and determined the allegations are unsubstantiated, but the case requires continued services. The letter shall be sent by First Class U.S. mail.
  - l. Letter to Inform Parent/Custodian About Abuse/Neglect – This letter shall be sent to the non-offending parent/custodian with whom the child has primary residence at the conclusion of the investigation, to inform the parent/custodian that abuse or neglect of the child in their care was substantiated. This will enable the parent/caretaker to seek appropriate treatment for the child if needed.

### 3. Hearing Request Forms

- a. A Hearing Request form shall be included with each notice of intent to substantiate and should be specific to the Regional Office that conducted the investigation. The letter will designate a Child Protection Level related to the risk of future harm and explain what that level means regarding employment in a health care facility, child care facility, and the Department of Services for Children, Youth and Their Families,

- as well as eligibility to become a foster or adoptive parent. The notice should also be sent when a criminal investigation is in progress, but no charges have been filed.
- b. The Hearing Request Form will be returned to the Substantiation Hearing Coordinator. It will be the responsibility of that office to track the requests and notify the appropriate regional staff when a request is received.
  - c. The Hearing Request Form must be received or postmarked within 30 days of the postmarked date of the Division's notification to the substantiated person.
  - d. Only the person who has been notified of the Division's intent to substantiate for having committed child abuse or neglect or their attorney may request a hearing in Family Court. A timely request by letter shall also be accepted in lieu of the Hearing Request Form.
  - e. Hearing requests postmarked 31 or more days after the postmarked date of the Division's notification letter will be denied. A letter of denial shall be sent by the Substantiation Hearing Coordinator. There is a denial letter for Level I (not placed on the Registry) and a denial letter for Levels II – IV (placed on the Registry).

**4. Petitions for Substantiation in Family Court**

- a. Within 45 days of receipt of the Hearing Request Form, the Division must file a Petition for Substantiation in Family Court. The petition must be filed in the county in which the alleged incident occurred.
- b. Within 45 days of the nolle prosequi, acquittal, or dismissal of criminal charges, the Division will file a Petition for Substantiation in Family Court.
- c. In all cases in which a minor perpetrator has been recommended for substantiation, the Division will file a Petition for Substantiation in Family Court, and the Court will conduct a Substantiation Hearing. The minor perpetrator is not required to request the hearing.
- d. The Division's duty to file a Petition for Substantiation is automatically stayed in any matter in which a criminal or delinquency proceeding involving the same incident of abuse or neglect is pending. If the criminal or delinquency proceedings result in a dismissal or acquittal, or if a criminal investigation is ongoing at the conclusion of the Division's investigation, but no charges have been filed, the Division shall file a Petition for Substantiation. If the criminal or delinquency proceedings result in a conviction (before or after the Division's investigation is concluded), the results are "final, binding, and determinative," regarding entry on the Child Protection Registry, and the Division shall not file a Petition to Substantiate. However, the substantiated party will have 30 days from the Notice of Intent to Substantiate to file with Family Court a Petition for Limited Purpose Hearing, if they wish to challenge the finding that the incident of abuse or neglect in the criminal conviction is the same incident of abuse or neglect that is the basis of the substantiation.
- e. The Division caseworker will contact a Regional Deputy Attorney General (DAG) who will write the Petition for Substantiation. The caseworker, or other regional designee, will forward the following information to the DAG:
  - Request for Substantiation Petition Checklist
  - Notice of Intent to Substantiate
  - Hearing Request Form (signed by alleged substantiated party)
  - Mitigating/Aggravating Circumstances Checklist (included in the Request for Substantiations Petition checklist)
  - FOCUS record
  - Address where the abuse or neglect incident occurred, in addition to the child's current residential address

- Specific type of abuse or neglect to be substantiated, as well as a recommended Registry level, supported by the Mitigating/Aggravating Circumstances Checklist
- f. The caseworker shall request that the DAG include all findings (primary, secondary, and tertiary) in the petition.
  - g. For the purpose of keeping children safe in childcare, health care facilities, and public schools, the statute allows the Division to file a motion in Family Court requesting that a party be entered on the Registry at a designated Child Protection Level pending a final order on the Petition for Substantiation. The caseworker will contact a Regional DAG to request that a Motion pending a final order on the Petition for Substantiation be filed whenever the Division makes any Level III or Level IV finding, and the worker will provide a signed and notarized affidavit.
  - h. The Regional DAG will notify Family Court if the substantiated person does not request a substantiation hearing after a decision on the Motion (if the Hearing Request Form was not returned or not returned timely to the Division).
  - i. The Division shall be represented by a Regional Deputy Attorney General in any hearing for which a petition requesting substantiation has been filed.
  - j. The statute allows the Division to request a finding of abuse or neglect in a child welfare proceeding. A separate Petition for Substantiation is not necessary in such case. If the Division concludes its investigation prior to the adjudicatory hearing, the caseworker will contact the Regional DAG to request that the custody petition be amended to request a finding of abuse or neglect and designation to a Child Protection Level. The Division caseworker should be specific as to which parent/caretaker we are requesting substantiation and recommend a Child Protection Level, supported by the Mitigating/Aggravating Circumstances checklist. If the Division does not conclude its investigation prior to the custody hearing, the caseworker will request that the DAG file a Petition for Substantiation.
  - k. If a criminal charge is pending, the custody proceeding will not be stayed.
  - l. When a parent's whereabouts are unknown prior to the custody hearing, the Division publishes notice in the newspaper. If the Division intends to request a substantiation finding and designation to a Child Protection Level during a custody hearing, the notice in the newspaper shall also include the Division's intent to substantiate.
  - m. When a case is being investigated jointly by the police, a DELJIS search must be conducted as close as possible to a scheduled Family Court substantiation hearing date to determine if charges have been filed for the same incident of abuse or neglect. The caseworker must inform the Regional DAG of any pending charges prior to the hearing.
  - n. Family Court may designate that a party be placed on a different Child Protection Level than that requested by the Division. The Division shall note any change in the finding type(s) and level in FOCUS.
  - o. An order of substantiation by Family Court may not be stayed pending appeal.

**5. Removal from the Child Protection Registry**

- a. A person who is entered on the Child Protection Registry at Child Protection Level II or III will be automatically removed from the Registry, within the time frames established by law, provided that person has not been substantiated for another incident of abuse or neglect while on the Registry. The Division shall notify the person of the removal.
- b. A person who is entered on the Child Protection Registry at Child Protection Level II or Level III may file a Petition for Early Removal prior to the expiration of the time designated for the level. The petition must be filed in the county in which the

substantiation occurred. The Family Court has discretion to remove the person from the registry. In making the decision, the Court considers all relevant factors including, but not limited to whether the person has successfully completed a Division-recommended case plan or Family Court-ordered case plan, or has provided documentation of completion of another Division-approved service.

- c. A person who is entered on the Child Protection Registry at Child Protection Level IV may not file a Petition for Early Removal. An exception to this rule applies when the individual was substantiated and placed on the registry as a minor. In such a situation, the petition must be filed in the county in which the substantiation occurred, and the Family Court has discretion to remove the person from the registry. In making the decision, the Court considers all relevant factors, including whether the person has successfully completed a Division-recommended or Family Court-ordered case plan, or has provided documentation of completion of another Division-approved service.
- d. The Division's treatment staff shall send a letter at the conclusion of the Division's services notifying the substantiated person whether they have successfully completed their Division case plan. Successful completion of a Family Service Plan is constituted by:
  - Documentation by the Treatment worker in the closing narrative that they have been able to observe internalized changes in the client. The narrative should also include a summation of reports and observations made by service providers.
  - Supporting documentation from schools, doctors, and community-based agencies, such as substance abuse treatment agencies, parenting classes, domestic violence groups, probation/parole, parent aides, and other professionals, supporting the client's contention that they have made changes in their lives.
- e. In some cases, the Division substantiates abuse or neglect, but does not offer treatment services to the substantiated person. The substantiated person may still file a Petition for Early Removal. Once notified by the Department of Justice that a Petition for Early Removal has been filed, regional staff will provide a recommendation to the Regional DAG either to support or not to support early removal, based on factors such as subsequent substantiated investigations, criminal findings for the same substantiated incident, and successful completion of a Division-approved service, which would mitigate the risk of future harm.
- f. Within 30 days of the Division being served with the Petition for Early Removal, the Regional DAG will file an Answer to the Court. Family Court may dispose of the Petition for Removal without a hearing.
- g. Removal from the Child Protection Registry means only that the person's name has been removed from the Registry and may no longer be reported to employers. The person's name and all case information shall remain in the Division's internal information system (FOCUS). The information in FOCUS may be used for, but is not limited to, investigative and treatment purposes, historical searches, foster and adoptive parent decisions and reporting pursuant to 31 Del.C. §309, child care licensing decisions, and reporting to law enforcement authorities.
- h. Information about individuals entered on the Child Protection Registry is limited to:
  - Division of Family Services staff who have a need to know;
  - Child care, health care, and public school employers upon request and with the written consent of the applicant or current employee to the Division's Criminal History Unit;
  - Law enforcement or the Department of Justice during a criminal investigation; and

- The individual entered on the Child Protection Registry by written notification at the conclusion of an investigation or by letter upon written request of the individual.

## **6. Criminal Charges, Proceedings, and Outcomes**

- a. Clients with pending criminal charges must have their charges resolved prior to moving forward with a Substantiation Hearing. Therefore, substantiated clients who return the Hearing Request Form but have pending criminal charges will have their petition stayed until resolution of the charges. The Division will track the status of criminal charges in DELJIS and will notify the Regional DAG as soon as possible when charges are resolved. All final sentencing orders will be checked against FOCUS to ensure the criminal finding is for the same incident investigated by the Division. A Petition for Substantiation will be filed if the criminal case is nolle prosequi, dismissed, or if the individual is found not guilty.
- b. Following are guidelines for reporting out to health care and child care employers by the Criminal History Unit:
  - Report the criminal finding even if the criminal finding is lower than the Child Protection Level.
  - If the substantiated person did not request a hearing and was placed on the Registry (by default) and was later charged and convicted for the same incident, the criminal finding is reported.
  - It is the responsibility of DHSS and DOE to apply HB 528 criminal background checks for its employees and report out to employers.
  - If a criminal finding in a higher court puts an individual on a higher Child Protection Level than the designation by Family Court, the criminal finding by the higher court should be reported.
- c. The role of the Substantiation Hearing Coordinator is to:
  - Send notification e-mail to the regional contact person, including a copy of the Hearing Request Form
  - Create FOCUS Substantiation Hearing events
  - Complete Substantiation Hearing events in FOCUS upon receiving the Family Court decision
  - Enter outcome of criminal charges into FOCUS when criminal charges are pending at the time of a Substantiation Hearing Request

## **C. FOCUS**

1. The SDM Risk Assessment is completed by the worker, indicating the appropriate finding and recommended registry level.
2. The Aggravating/Mitigating Circumstances Checklist is completed as a Word document and scanned and attached to the investigation.
3. The supervisor verifies that the finding and registry level recommended by the worker are correct and completes the Investigation Disposition event.
4. If a finding needs to be modified due to a criminal conviction, dismissal of the substantiation petition, or internal review, the DFS Substantiation Coordinator will modify the finding in the investigation through the perpetrator summary table.
5. Upon receipt of a valid Hearing Request Form, the DFS Substantiation Hearing Coordinator will open a CPR case in FOCUS.
6. Upon receipt of a substantiation court order, the DFS Substantiation Hearing Coordinator will modify the finding in the investigation in accord with the court order by completing a petition and hearing event in the CPR case.



7. Upon receipt of a court order for early removal, the DFS Substantiation Hearing Coordinator will modify the perpetrator summary table by completing a petition and hearing event in the CPR case.

**D. FORMS** Use the DFS policy website to access any forms:  
<https://kids.delaware.gov/policies/dfs-policies>

Mitigating/Aggravating Circumstances Checklist  
Hearing Request Form—Level I  
Hearing Request Form—Level II-IV  
Notice of Intent to Substantiate  
Notice of Intent to Substantiate, Charge Pending  
Notice of Intent to Substantiate, Criminal Conviction Based on Same Child Abuse and Neglect Incident  
Notice of Intent to Substantiate, Dependency (No Abuse/Neglect)  
Notice of Intent to Substantiate, Dependency, Family Court Determination (No Abuse/Neglect)  
Letters to Minor Perpetrators  
No Evidence to Substantiate, Case Closed  
Unsubstantiated with Concern, Case Closed  
Unsubstantiated with Concern, Case Opened for Risk  
Unsubstantiated with Concern, Case Opened for Risk, Perpetrator Not Known  
Unsubstantiated with Concern, Case Active in Treatment  
Letter to Inform Parent/Custodian About Abuse/Neglect  
Denial Letter—Level I  
Denial Letter—Level II-IV  
Request for Substantiation Petition checklist