

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER b: PROGRAM AND TECHNICAL SUPPORT

PART 336
APPEAL OF CHILD ABUSE AND NEGLECT
INVESTIGATION FINDINGS

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AUTHORITY: Authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5]; implementing Section 7.16 of the Abused and Neglected Child Reporting Act [325 ILCS 5/7.16].

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amended at 26 Ill. Reg. 4175, effective March 8, 2002; peremptory amendment at 29 Ill. Reg. 21091, effective December 8, 2005; amended at 41 Ill. Reg. 15260, effective December 6, 2017.

Section 336.10 Purpose

The purpose of these rules is to explain the review and administrative hearing process the Department guarantees to persons requesting to amend/expunge identifying information from or remove the record of a child abuse or neglect report from the State Central Register.

Section 336.20 Definitions

"Abused child" means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

inflicts, causes to be inflicted, or allows to be inflicted upon such child physical or mental injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

creates a substantial risk of physical or mental injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;

commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 2012 [720 ILCS 5] or in the Wrongs to Children Act [720 ILCS 150], and extending those definitions of sex offenses to include children under 18 years of age;

commits or allows to be committed an act or acts of torture upon such child;

inflicts excessive corporal punishment or, in the case of a person working for an agency who is prohibited from using corporal punishment, inflicts corporal punishment upon a child or adult resident with whom the person is working in his or her professional capacity;

commits or allows to be committed the offense of female genital mutilation, as defined in Section 12-34 of the Criminal Code of 2012, against the child.

causes to be sold, transferred, distributed or given to such child under 18 years of age a controlled substance as defined in Section 102 of the Illinois Controlled Substances Act [720 ILCS 570] or in violation of the Methamphetamine Control and Community Protection Act [720 ILCS

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646], except for controlled substances that are prescribed in accordance with Article III of the Illinois Controlled Substances Act and are dispensed to such child in a manner that substantially complies with the prescription; or

commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons as defined in Section 10-9 of the Criminal Code of 2012 against the child.

A child shall not be considered abused for the sole reason that the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act. [325 ILCS 5/3]

"Administrative hearing", in the context of this Part, means a formal review of a final finding determination made by the Division of Child Protection at the conclusion of a child abuse and neglect investigation.

"Administrative Law Judge" or "ALJ" means a licensed attorney who is appointed by the Director of the Department and is responsible for conducting administrative hearings, including pre-hearings, and issuing a recommended decision.

"Adult resident" means any person between 18 and 22 years of age who resides in any facility licensed by the Department under the Child Care Act of 1969 [225 ILCS 10]. For the purpose of this Part, the definitions of "abused child" and "neglected child" include adult residents who meet the criteria set forth in those definitions.

"Agency" means *a child care facility licensed under Section 2.05 or Section 2.06 of the Child Care Act of 1969 and includes a transitional living program that accepts children and adult residents for placement who are in the guardianship of the Department. [325 ILCS 5/3]*

"Amend", as used in this Part, means changing the final finding determination of an allegation in an indicated report of child abuse or neglect or changing identifying information of the subjects of an indicated report of child abuse or neglect.

"Administrative appeal" or "appeal" means the pre-hearing conference and formal administrative hearing.

"Appellant" means the person who requests a review or administrative hearing or in whose behalf a review and administrative hearing is requested.

"Authorized representative" means a person, including an attorney, authorized in writing by a party to assist in an administrative appeal. If the party is unable to reduce the authorization to writing, the Department, on request, shall assist the party in doing so.

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"Blatant disregard" means *an incident where the real, significant and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm. With respect to a person working at an agency in his or her professional capacity with a child or adult resident, "blatant disregard" includes a failure by the person to perform job responsibilities intended to protect the child's or adult resident's health, physical well-being, or welfare, and, when viewed in light of the surrounding circumstances, evidence exists that would cause a reasonable person to believe that the child was neglected. With respect to an agency, "blatant disregard" includes a failure to implement practices that ensure the health, physical well-being, or welfare of the children and adult residents residing in the facility.* [325 ILCS 5/3]

"Chief Administrative Law Judge" or "Chief ALJ" means the person who is responsible for the supervision of the Administrative Law Judges and the coordination of the administrative hearing appeal process.

"Child care worker" means any person who is employed to work directly with children and any person who is an owner/operator of a child care facility, regardless of whether the facility is licensed by the Department. "Child care worker" also means persons employed as full-time nannies. "Child care worker" also includes a person currently enrolled in an academic program that leads to a position as a child care worker; or who has applied for a license required for a child care worker position. A person will be considered to be a child care worker under this Part if, at the time of the notice of the investigation, he or she:

has applied for, or will apply within 180 days for, a position as a child care worker;

is enrolled in, or will commence within 180 days, an academic program that leads to a position as a child care worker; or

has applied for a license as a child care worker.

A child care worker may be subject to this Part if alleged to be responsible for child abuse or neglect outside of his or her employment.

For the purposes of this definition, any person who is employed full- or part-time at or is the owner of any of the following shall be considered a child care worker:

child care institutions;

child welfare agencies;

day care/night care centers;

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day care/night care homes;

day care/night care group day care homes;

group homes;

hospitals or health care facilities;

schools, including school aides, bus drivers, school teachers and administrators, but not tenured school teachers or administrators who have other disciplinary processes available to them; and

before and after school programs, recreational programs and summer camps.

"Child" means any person under the age of 18 years, unless legally emancipated by reason of marriage or entry into a branch of the United States armed services. [325 ILCS 5/31]

"Credible evidence of child abuse or neglect" means that the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that a child was abused or neglected.

"Date of action" means the date on which any Department action becomes effective.

"Day", for purposes of computation of time, means business day, unless otherwise specified.

"Department" means the Illinois Department of Children and Family Services.

"Department's legal representative" means an attorney who is licensed to practice law in the State of Illinois and who is responsible for presenting the Department's case.

"Discovery", for purposes of this Part, means the rights of any party to request and have access to, in advance of the hearing, any materials relevant to the investigation and indicated finding and a list of witnesses in the possession of any other party.

"Expedited appeal" means an appeal that may be requested only by a child care worker who is the subject of a Department determination of indicated child abuse and/or neglect. Expedited appeals require that the Director issue a final administrative decision within 35 calendar days after the date of receipt by the Department's Administrative Hearings Unit of a written request for an expedited appeal, excluding any continuances at the request of, or with the agreement of, the appellant.

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"Expunge", as used in this Part, means removing identifying information regarding the subjects of an indicated child abuse or neglect report from the State Central Register.

"Final administrative decision" means the Department's final decision, order or determination on an appealed issue rendered by the Director in a particular case that affects the legal rights, duties or privileges of participants, that terminates the proceedings on the specific appeal before the Department's Administrative Hearings Unit, and that may be further appealed to the circuit court under the Illinois Administrative Procedure Act.

"Indicated report" means any report made under the Abused and Neglected Child Reporting Act [325 ILCS 5] (ANCRA) for which it is determined, after an investigation, that credible evidence of the alleged abuse or neglect exists [325 ILCS 5/3].

"Member of the clergy" means a clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs.

"Neglected child" means any child:

who is not receiving:

the proper or necessary nourishment or medically indicated treatment, including food or care not provided solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians; or

the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child's well-being; or

other care necessary for his or her well-being, including adequate food, clothing and shelter;

who is subjected to an environment which is injurious insofar as:

the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare; and

the likely harm to the child is the result of a blatant disregard of parent, caretaker, or agency responsibilities;

who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care;

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who has been provided with interim crisis intervention services under Section 3-5 of the Juvenile Court Act of 1987 [705 ILCS 405] and whose parent, guardian or custodian refuses to permit the child to return home and no other living arrangement agreeable to the parent, guardian or custodian can be made, and the parent, guardian or custodian has not made any other appropriate living arrangement for the child; or

who is a newborn infant whose blood, urine or meconium contains any amount of a controlled substance as defined in Section 102(f) of the Illinois Controlled Substances Act or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn infant.

A child shall not be considered neglected for the sole reason that:

the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time;

the child has been relinquished in accordance with the Abandoned Newborn Infant Protection Act [325 ILCS 2].

A child shall not be considered neglected or abused for the sole reason that:

the child's parent or other person responsible for his or her welfare depends upon spiritual means through prayer alone for the treatment or cure of disease or remedial care as provided under Section 4 of ANCRA; or

the child is not attending school in accordance with the requirements of Article 26 of the School Code [105 ILCS 5]. [325 ILCS 5/3]

"Parents" means the child's legal parents whose rights have not been terminated.

"Parties" means the Department and those persons who have appealed the final finding determination made by the Department. No person may join in an appeal unless that person would have standing to appeal the determination himself or herself.

"Perpetrator" means a person who, as a result of investigation, has been determined by the Department to have caused child abuse or neglect. [325 ILCS 5/3]

"Person responsible for the child's welfare" means:

the child's parent, guardian, foster parent or relative caregiver;

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any person responsible for the child's welfare in a public or private residential agency or institution;

any person responsible for the child's welfare within a public or private profit or not-for-profit child care facility; or

any other person responsible for the child's welfare at the time of the alleged abuse or neglect, including:

any person that is the custodian of a child under 18 years of age who commits or allows to be committed, against the child, the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services (see Section 10-9(b), (c) and (d) of the Criminal Code of 2012); or

any person who came to know the child through an official capacity or position of trust, including but not limited to health care professionals, educational personnel, recreational supervisors, members of the clergy, and volunteers or support personnel in any setting where children may be subject to abuse or neglect. [325 ILCS 5/3]

"Preponderance of the evidence" means the greater weight of the evidence which renders a fact more likely than not.

"Regular appeal" means an appeal that may be requested by a perpetrator, including child care workers, in which the final administrative decision by the Director is issued within 90 calendar days after the date of receipt by the Department's Administrative Hearings Unit of a written request for an appeal, excluding any requests for a continuance by the perpetrator or any continuances by the agreement of the parties.

"Request for an appeal" means the written request by an appellant for an administrative hearing to determine whether the record of the report should be amended, expunged, or removed on the grounds that it is inaccurate or being maintained in a manner inconsistent with the Abused and Neglected Child Reporting Act. If the appellant is unable to request an appeal in writing, the Department or purchase of service agency shall help the appellant put the request in writing.

"State Central Register" or "SCR" is the record of child abuse and/or neglect reports maintained by the Department pursuant to ANCRA. The State Central Register is also referred to as the Department's statewide toll-free child abuse and neglect hotline.

"Stipulation" means an agreement by the parties that certain facts are true or can be introduced into evidence without further proof.

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"Subject of report" means any child or adult resident reported to the *central register of child abuse and neglect established under Section 7.7 of ANCRA as an alleged victim of child abuse or neglect and the parent or guardian of the alleged victim or other person responsible for the alleged victim's welfare* who is named in the report or added to the report as an alleged perpetrator of child abuse or neglect. [325 ILCS 5/3]

"Unfounded report" means any report made under ANCRA for which it is determined, after an investigation, that no credible evidence of the alleged abuse or neglect exists. [325 ILCS 5/3]

"Unknown perpetrator" means a person who caused or is alleged to have caused child abuse or neglect and whose identity or identifying information has not been determined by the Department.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.30 Written Notification of the Final Finding in Child Abuse and Neglect Investigations

- a) The State Central Register shall provide a written notification of the final finding determination of each child abuse and neglect investigation. The written notification that is sent to persons who are indicated for child abuse or neglect shall include, but not be limited to, the following:
- 1) a specific statement that the person has been indicated for child abuse;
 - 2) the name of the perpetrator indicated for child abuse or neglect;
 - 3) the allegations determined to be indicated;
 - 4) the length of time the indicated finding shall be retained in the State Central Register; and
 - 5) an explanation of how to request an administrative appeal of the Department's indicated finding and the address or facsimile number where the written request for an administrative appeal must be sent. The explanation shall specify that the request:
 - A) must be in writing; and
 - B) must be postmarked within 60 days after the date of the official notification letter, except when the person indicated for child abuse or neglect has a case pending in any criminal or juvenile court concerning the same set of facts as the indicated final finding.

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- b) The written notification of the final finding determination of the child abuse and neglect investigation shall be provided to the person indicated for child abuse and neglect within 10 days after the final determination to indicate has been entered into the State Central Register. The written notification of the final finding determination of the child abuse and neglect investigation shall be in the primary language of the person to whom the notice is sent.
- c) When requested, Department staff shall assist persons indicated for child abuse or neglect in preparing a written request for an administrative appeal. The Department shall not hinder a person who wishes to appeal an indicated finding determination of child abuse or neglect.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.40 Notice of the Right to Appeal and Receive an Administrative Hearing (Repealed)

(Source: Repealed at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.50 Who May Appeal

Any person or agency who has been named as a perpetrator in an indicated or unfounded report of child abuse or neglect has the right to appeal any of the actions or inactions listed in Section 336.60 of this Part. The appeal may be filed by:

- a) the appellant personally;
- b) the appellant's authorized representative or attorney;
- c) the parent or legal guardian who appeals on behalf of a child who has been named as a perpetrator in an indicated report; or
- d) an individual legally acting on a person's behalf. If the appeal is filed by an individual legally acting on a person's behalf, the individual must provide a certified copy of the court order authorizing the individual to act on behalf of the appellant.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.60 What May Be Appealed

The following issues may be appealed through an administrative appeal:

- a) an indicated finding of child abuse or neglect, with the exception that there is no right to an appeal on the ground of the report's inaccuracy if there is a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator concerning the circumstances that gave rise to the indicated report;

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- b) failure to remove an unfounded report of child abuse or neglect from the State Central Register involving any of the situations described in this subsection (b). The criteria in this subsection apply unless the unfounded report is being retained longer as an intentionally false report at the unfounded perpetrator's request.
 - 1) The death of a child, the sexual abuse of a child, or serious physical injury to a child after the passage of three years from the date the final finding is entered into the State Central Register;
 - 2) Any allegation other than death, sexual abuse or serious physical injury of a child after the passage of 12 months from the date the final finding is entered into the State Central Register; or
 - 3) Whenever a subsequent report is received concerning a perpetrator of an existing unfounded report and the unfounded report is retained longer than 12 months after the conclusion of the subsequent report.
- c) failure to remove an unfounded report made by a mandated reporter involving a report as described in 89 Ill. Adm. Code 431.30(b)(5)(B) (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services) after the passage of 12 months from the date the final finding is entered into the State Central Register, unless the report is being retained longer under subsection (b) of this Section or the report is being retained as an intentionally false report at the unfounded perpetrator's request;
- d) failure to remove an unfounded report made by a mandated reporter involving a report as described in 89 Ill. Adm. Code 431.30(b)(5)(B) after passage of 60 days from the date the final finding is entered into the State Central Register, unless the report is being retained longer under subsection (b) or (c) of this Section or the report is being retained as an intentionally false report at the unfounded perpetrator's request;
- e) failure to remove any other unfounded report, not retained for a longer period of time under any of the preceding subsections, within 30 days from the date the final finding is entered into the State Central Register, unless the report is being retained as an intentionally false report at the unfounded perpetrator's request;
- f) failure to expunge or remove information about an indicated report of child abuse or neglect that the appellant believes is maintained in a manner inconsistent with ANCRA; and
- g) whether the Department determined retention period assigned to the indicated report is in accordance with 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by DCFS).

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

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Section 336.70 Appearance/Authorization to Represent

- a) During the appeal, parties may represent themselves or may be represented by an Authorized Representative.
- b) No person shall be allowed to act as an Authorized Representative in any matter before the Administrative Hearings Unit without first filing a written authorization with the Administrative Hearings Unit. The authorization shall be effective only for the particular matter in which it is filed, unless the matter has been consolidated with other proceedings by order of the Chief Administrative Law Judge or the assigned Administrative Law Judge.
- c) No particular form is required to file a written authorization for representation. However, all authorizations filed with the Administrative Hearings Unit shall be notarized, signed by the appellant and Authorized Representative, and identify:
 - 1) the name, address, and phone number of the party represented;
 - 2) the name, address, and phone number of the authorized representative; and
 - 3) the appeal in which representation is authorized.
- d) An Authorized Representative may exercise the rights of the appellant in the appeal process. These rights include the right to:
 - 1) review and copy material placed in record during the proceeding;
 - 2) receive Department and Administrative Hearing notices;
 - 3) request and receive discovery materials;
 - 4) speak, or otherwise be heard, on behalf of the appellant in the administrative hearing process;
 - 5) have an interpreter at the Department's expense; and
 - 6) take any other actions permitted an appellant during the appeal process.

(Source: Amended at 24 Ill. Reg. 7660, effective June 1, 2000)

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Section 336.80 How to Request an Administrative Appeal Hearing/Sufficiency

After the Department has indicated a report and issued a notice of the final finding determination and the right to an administrative hearing, the perpetrator named in the notification may appeal by filing a timely and sufficient written Request for Appeal with the Administrative Hearings Unit (AHU). The request must be filed in person, mailed, faxed or delivered by a third-party commercial carrier to the AHU address or fax number within 60 days after the notification sent by the State Central Register (SCR); however, the 60 days is tolled for those exceptions in subsection (e). Upon receipt of a timely request for a regular appeal, the Department shall send the appellant, prior to the scheduled pre-hearing, a copy of the investigative file from which confidential information has been deleted in accordance with 89 Ill. Adm. Code 431.

- a) For purposes of determining timeliness, an appeal shall be deemed filed:
 - 1) as of the date of the postmark;
 - 2) as of the date of receipt by the AHU, if the appeal was filed in person at the AHU office; or
 - 3) the date the appeal was received by electronic facsimile transmission at the AHU office or the date of electronic filing (email), when available.
- b) When the last day for the filing of an appeal falls upon a day on which the AHU is not open for business, an appeal shall be deemed timely if filed by the first regular business day thereafter.
- c) An appeal shall be deemed sufficient if it provides the following information in legible form:
 - 1) name, address and phone number (if any) of the appellant and the SCR number; and
 - 2) name, address and phone number of the appellant's representative (if applicable).
- d) In the event that the Chief Administrative Law Judge finds an appeal to be timely but not sufficient (see subsection (c)), the appeal and a request for the required missing information shall be returned to the appellant within 5 days after receipt by the AHU. If the appellant re-files a sufficient appeal within 5 days from the postmark of the date that appeal is returned, the appeal shall be considered timely. The AHU shall not consider an appeal actionable, and no time frames shall begin to run, until receipt of a sufficient appeal. If the appeal does not have a legible name or address, the Chief ALJ may dismiss the appeal.

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- e) *The 60-day deadline for filing a request to amend the record or remove the record of the report from the State Central Register shall be tolled until after the conclusion of any criminal court action in the circuit court or after adjudication in any juvenile court action concerning the circumstances that give rise to an indicated report. [325 ILCS 5/7.16]*
- f) If the appellant requests an expedited hearing, and the Chief ALJ is unable to determine if the appellant is a child care worker, the Chief ALJ shall request that the appellant provide documentation to validate his or her child care worker status as soon as is practicable, but not later than 5 days after receiving the appellant's request. Any documentation requested by the Chief ALJ should be provided by the appellant within 10 days after the request. If no such documentation is provided, the appeal will be deemed non-expedited and scheduled accordingly. If the appellant makes a timely submission of the requested documentation, the Chief ALJ shall make a written ruling on the child care worker's status as promptly as possible, but no later than 5 days after receiving the appellant's documentation. A written notification of the Chief ALJ's decision shall be sent to the appellant. Any time expended for the request, review and determination by the Chief ALJ as to the appellant's status as a child care worker shall not be attributed to the Department.
- g) Appellants unable to file a written request for an appeal may request and receive appropriate assistance from Department field office staff to ensure that a proper written request for an appeal is made.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.85 Expedited Administrative Appeals for Child Care Workers

- a) Child care workers who are the subject of a Department finding that an allegation of child abuse and/or neglect is indicated may request from the Department's Administrative Hearings Unit an expedited appeal. The written request for an appeal must specifically state that an expedited appeal is being requested. The Department may request that an appellant requesting an expedited appeal provide documentation to confirm his or her status as a child care worker. Any time expended for the request, review and determination by the Chief ALJ as to the appellant's status as a child care worker shall not be attributed to the Department.
- b) Within seven calendar days after AHU's receipt of the request for an expedited appeal, the Department will set pre-hearing and hearing dates and send the appellant and his or her representative a notice by certified mail of the dates, along with a copy of the investigative file.

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- c) The pre-hearing date will be set within 14 calendar days after receipt of the request for expedited appeal. The parties should be prepared to have the Department issue any subpoenas after the conclusion of the pre-hearing conference.
- d) The hearing date will be set within seven calendar days after the pre-hearing conference and within 21 calendar days after receipt of the request for expedited appeal. The Department will set aside two consecutive days for the administrative hearing.
- e) If the appellant in an expedited appeal requests any extension of time that is in excess of seven calendar days, the appeal shall automatically be converted from an expedited appeal to a regular appeal under Section 336.80.
- f) The ALJ will provide the Director with a recommended decision within 7 calendar days after completion of the expedited appeal hearing.
- g) The Director will issue a final administrative decision within seven calendar days after receipt of the ALJ's recommended decision and the Director's decision will be sent to the appellant and his or her representative by certified mail within 35 calendar days after the date on which the expedited appeal request was received.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.90 Confidentiality During the Expungement Process

- a) The Department has an affirmative duty to protect the confidentiality of personal information, in accordance with 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services) and the Adoption Assistance and Child Welfare Act of 1980 (42 USC 671(a)(8)). Confidentiality shall be preserved throughout the administrative hearing, the transmittal of the ALJ's recommendation to the Director and the release of the final administrative decision. All parties shall be advised of the Department's duty to protect confidentiality during the administrative appeal.
- b) The ALJ has the right to exclude any individual or agency that does not have the right of access to the information being presented in accordance with the federal Adoption Assistance and Child Welfare Act of 1980, the Children and Family Services Act, ANCRA, and any other pertinent Act.
- c) The ALJ has the authority to bifurcate the hearing into separate segments that deal with issues of other parties in order to preserve confidentiality as mandated under applicable statutes and rules and to prohibit discussion or introduction of evidence that is outside of the scope of the issues being presented in that segment.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

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Section 336.100 Rights and Responsibilities in Administrative Hearings (Repealed)

(Source: Repealed at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.105 The Administrative Appeal Hearing

The administrative appeal hearing shall consist of a pre-hearing conference and a hearing date during which testimony is taken and evidence is received. The appellant or the appellant's authorized representative shall be prepared to participate at all pre-hearing conferences and hearings. Hearings shall be recorded; however, any party wishing to have the proceedings recorded by a certified court reporter may do so at the party's own expense.

- a) **Pre-Hearing Conference**
The pre-hearing conference shall be convened by telephone unless the ALJ and the parties agree that the pre-hearing conference shall be held in person. The ALJ shall place all telephone calls. The cost of telephone calls will be borne by the Department. The AHU shall arrange for the appellant to use a telephone at a Department Field Office if the appellant has previously notified the Department that he/she does not have access to a telephone.
 - 1) At the pre-hearing conference, the ALJ shall provide the parties with standard admonishments that shall include a statement of the rights of the parties and the right to have a timely hearing within the applicable timeframe, as well as the setting of dates for the administrative appeal hearing.
 - 2) During the pre-hearing conference, the appellant and the Department should be prepared to discuss:
 - A) potential witnesses;
 - B) exhibits that might be offered;
 - C) timeframes for the administrative appeal hearing;
 - D) any potential motions that could be filed;
 - E) any other issues that would impact the timing and length of the administrative appeal hearing, such as, but not limited to, whether any of the witnesses require a special accommodation or a translator; and
 - F) The Department's legal representative and the appellant and his or her representative have an affirmative duty to determine if there is, and to report to the ALJ before any hearing is scheduled, any pending criminal case or juvenile court case concerning the circumstances that gave rise to the indicated report.

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- b) The ALJ shall address the following issues during the pre-hearing conference:
- 1) If the appellant asserts, at the pre-hearing conference, that he or she is a child care worker who was not afforded an Administrator's Teleconference during the child abuse and neglect investigation (see 89 Ill. Adm. Code 300 (Reports of Child Abuse and Neglect)), the appellant may request a review of the investigation. The ALJ may request documentation to validate the child care worker status of the appellant. The review shall be conducted jointly by the Division of Child Protection and the Office of Legal Services and shall determine if the case should be unfounded or if a hearing date will be set. The review must be conducted within 14 days from the date of the pre-hearing conference in which the appellant claims he or she is a child care worker who was not afforded an Administrator's Teleconference during the child abuse and neglect determination. Any time expended for the review process will be attributed to the appellant and not to the Department (see Section 336.220(a)(1) or (2)).
 - 2) Whether parties have exchanged lists of the names of persons who may provide testimony during the administrative hearing.
 - 3) Whether children may testify or be involved in the hearing.
 - A) Either party requesting that a child be subpoenaed to testify or be involved in the hearing process must demonstrate at the pre-hearing conference that:
 - i) the child's testimony or involvement is essential to a determination of an issue on appeal;
 - ii) the likelihood of inflicting emotional harm to the particular child involved can be minimized with conditions and restrictions and the child's testimony is necessary for the interests of justice; and
 - iii) no alternatives, such as stipulations or transcripts from prior court hearings, exist that may be used as a substitute for the child's testimony.
 - B) In determining whether a child will testify, the ALJ must consider, when available, the opinion of the child's treating clinician regarding the impact on the child if the child is permitted to testify or not permitted to testify, and how any negative impact could best be minimized for the particular child.
 - i) The ALJ must balance the hardship on the child, taking into account possible restrictions or modifications described in

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subsection (c)(3)(B)(ii), against the interests of justice and the harm to the child if an appeal is improperly denied or an indicated finding is improperly expunged.

- ii) If an ALJ allows a child to testify, the ALJ may set any conditions or restrictions, and may use any techniques allowed in any juvenile, civil or criminal court (including but not limited to in camera interviews, video conferences, questions submitted in writing, exclusion of parties to the proceeding (including but not limited to the parents), or change of hearing room or location) that will help minimize any emotional impact on the child.
- 4) Whether:
 - A) the parties agree to hold the hearing by telephone or video conference;
 - B) whether witnesses should be scheduled to testify at specific times;
 - C) there are any witnesses, such as medical professionals, that should be permitted to testify telephonically; and
 - D) whether there are any non-professional witnesses who should be allowed to testify telephonically.
 - 5) Whether the parties have or will have exchanged records or documents prior to the administrative hearing.
 - 6) Whether the parties can agree upon any facts as true.
 - 7) Motions Filed by Any Party
 - A) Any motions from the appellant or the Department shall be filed with the ALJ and served upon the AHU and the opposing party within a reasonable time prior to the hearing.
 - B) Any motion that is consistent with administrative practice and procedure and does not infringe upon the Director's authority may be heard.
 - C) Motions filed shall be filed in accordance with any motion practice and timelines established by the ALJ responsible for hearing the case.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

POLICY GUIDE 2019.02

RULE 336 APPEAL OF CHILD ABUSE AND NEGLECT INVESTIGATION FINDINGS

DATE: January 31, 2019
TO: DCFS Administrative Hearing Unit staff and their Supervisors
FROM: Beverly J. Walker, Acting Director
EFFECTIVE: Immediately

I. PURPOSE

The purpose of this Policy Guide is to inform the Department’s Administrative Hearing Unit staff and their Supervisors of new changes to Public Act 100-0880, effective January 1, 2019, in correlation to the administrative appeal hearing process. These changes are regarding when service of Notices and Orders that do not contain personal/confidential information can be emailed to an unrepresented appellant, an authorized representative, a parent or legal guardian of a minor appellant, or an individual legally acting on a person’s behalf. Policy amendments will also show standards for confirming delivery of Notices/Orders by email, by securing a “delivery receipt” or a counter email acknowledgement. If AHU does not receive confirmation of delivery, the Notices and Orders shall be sent by regular mail. The Department will be proposing amendments to **Rule 336, Appeal of Child Abuse and Neglect Investigation Findings**, to reflect the changes as outlined in this Policy Guide.

This Policy Guide is effective immediately.

II. PRIMARY USERS

The primary users of this Policy Guide are the Department’s Administrative Hearing Unit Staff and their Supervisors.

III. BACKGROUND AND SUMMARY

Department Rule 336 currently has language that allows notices to be sent by regular/certified mail. Public Act 100-0880 allows for notices to be sent by email.



IV. NEW REQUIREMENTS FOR COMPLIANCE TO NOTICES THAT CAN BE EMAILED

Section 336.105 The Administrative Appeal Hearing

b) The ALJ shall address the following issues during the pre-hearing conference:

11) Service of Notices and Orders by email:

- A) Any attorney representing a party to the hearing is required to provide to the Administrative Law Judge one or more email addresses at which the attorney shall accept service of Notices and Orders in connection with the hearing. A party represented by an attorney may provide the email address of the attorney. It is the responsibility of the attorney to notify the Administrative Law Judge of any changes in email addresses.
- B) The Administrative Law Judge may request, but not require, the following persons to consent to accept service by email of Notices and Orders in connection with the hearing, by designating an email address at which they will accept service:
 - i (i) an unrepresented appellant;
 - ii (ii) an Authorized Representative who is not an attorney;
 - iii (iii) a parent or legal guardian of a minor appellant; or
 - iv (iv) an individual legally acting on a person's behalf.
- C) When an unrepresented appellant, Authorized Representative who is not an attorney, parent or legal guardian of a minor appellant or individual legally acting on a person's behalf consents to accept service by email, it is the responsibility of the unrepresented appellant such person to notify the Administrative Law Judge of any change in email addresses.
- D) *Any person or entity who submits an email address shall also be given the option to designate no more than two secondary email addresses at which the person or entity consents to accept service, and if such secondary email addresses are provided, the Department must serve the Notices and Orders to both the designated primary and secondary email addresses. [5 ILCS 100/10-75]*
- E) A Notice or Order may not be sent by email if it contains:
 - (i) a Social Security or individual taxpayer identification number, driver's license number, or any information that could reasonably be deemed personal, proprietary, confidential;

- (ii) any information about or concerning a minor, including but not limited to the minor’s name, date of birth or address; or
 - iii) The name of a minor appellant. In notices under this section, minor appellants may be identified by initials only.
- F) For the purpose of service in this section, the following information is not considered personal or confidential:
 - (i) the name of the Administrative Law Judge, appellant, attorney or authorized representative;
 - (ii) the allegations that were indicated;
 - (iii) the investigation notice id, the State Central Register (SCR), docket (DKT) and (AHU) number;
 - (iv) rulings on motions; and
 - (v) other information described under Section 336.120(c), including but not limited to investigation identification numbers, date, time and location of a pre-hearing or hearing.
- G) Service of email is deemed complete on the day of transmission.
- H) The AHU shall confirm delivery by email by securing a “delivery receipt” for the primary or secondary email addresses (if applicable) A counter email acknowledgement from the appellant or the appellant’s representative shall also serve as confirmation of delivery. If AHU does not receive confirmation of delivery, the notices and orders shall be sent by regular mail.

V. QUESTIONS

Questions regarding this Policy Guide may be directed to the Office of Child and Family Policy at 217-524-1983 or via Outlook at DCFS.Policy. Non-Outlook users may e-mail questions to DCFS.Policy@illinois.gov.

VI. FILING INSTRUCTIONS

File this Policy Guide immediately following page (18) of **Part 336, Appeal of Child Abuse and Neglect Investigation Findings**.

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- D) If any party believes that a finding in a juvenile court proceeding is dispositive to an issue on a pending administrative appeal, he or she may file a motion, with supporting documentation, requesting the appropriate relief.

- 8) The need of either party for an interpreter in his/her preferred language or for communication assistance.

- 9) Whether any juvenile or criminal cases related to the indicated finding on appeal are pending in circuit court. If the ALJ discovers during the pre-hearing conference that there is a pending juvenile or criminal case arising from the same set of facts as the indicated finding, the appeal will be dismissal as premature. The perpetrator shall be informed orally that, within 60 days after the conclusion of any criminal court action in the circuit court, or after adjudication in any juvenile court action concerning the circumstances that give rise to an indicated report, he or she may again file a request, except that there shall be no such right to a hearing on the ground of the report's inaccuracy if there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator. The dismissal order shall also state that the perpetrator may file an administrative appeal within 60 days after the conclusion of the criminal court action in circuit court or after adjudication in any juvenile court action, except that there shall be no right to an administrative appeal if there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator.

- 10) Upon notification from the Department's legal representative or the perpetrator that a criminal or juvenile court action is pending, based on the same facts or circumstances as the administrative expungement appeal, the appeal will be dismissed as premature. The dismissal order shall state that the perpetrator may file an administrative appeal within 60 days after the conclusion of the criminal court action in circuit court or after adjudication in any juvenile court action, except that there shall be no right to an administrative appeal if there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator.

(Source: Added at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.110 The Administrative Hearing and Pre-Hearing Conference (Repealed)

(Source: Repealed at 41 Ill. Reg. 15260, effective December 6, 2017)

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Section 336.115 Rights and Responsibilities During the Administrative Appeal

- a) Rights of the Minor
- 1) *If the minor, who is the victim named in the report sought to be amended or removed from the State Central Register, is the subject of a pending action under Article II of the Juvenile Court Act of 1987, or the report was made while a guardian ad litem (GAL) and/or attorney was appointed for the minor under Section 2-17 of the Juvenile Court Act of 1987, then the minor shall, through the minor's attorney or GAL appointed under Section 2-17 of the Juvenile Court Act of 1987, have the right to participate and be heard in such hearing. [325 ILCS 5/7.16]*
 - 2) The minor, through the minor's attorney and/or GAL, has the right to participate and be heard during the administrative appeal. "Participate" means that the attorney/GAL may submit an offer of proof regarding testimony and documentary evidence not presented by the parties and may ensure that proper protections are in place for clients who are called to testify during the hearing. "Be heard" means the attorney/GAL may submit a closing argument or position statement. The minor's attorney/GAL may request a continuance only on the basis that notice, as required by Section 336.105(a)(3), was not provided. The minor's attorney/GAL does not thereby become a party to the proceeding or have standing or intervenor status in the administrative appeal proceeding, and shall not have the right to request a continuance or to present, question or cross-examine witnesses.
 - 3) Once it is identified that the subject matter of the hearing concerns a minor being represented by a GAL/attorney, the Department shall notify the GAL/attorney, as provided in Section 105(a)(3), and shall provide the GAL/attorney a copy of the "Intent to Participate" form. The GAL/attorney shall file the completed form within 5 days after receipt. Filing the form shall ensure the GAL/attorney is notified of all dates regarding the hearing.
- b) Rights of the Parties
- 1) During the administrative hearing, the appellant and the Department have the right to:
 - A) present and question witnesses;
 - B) present any information relevant to the issues;
 - C) question or cross-examine witnesses, including an opportunity to question opposing witnesses, and dispute any information; and
 - D) present stipulations to facts or issues.

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- 2) An appellant may bring an authorized representative to the hearing. All expenses of an authorized representative or of an appellant's witnesses shall be paid by the appellant.
 - 3) Before and during the administrative hearing:
 - A) the appellant may withdraw the appeal;
 - B) the Department may expunge the indicated finding; or
 - C) the Department may amend the indicated finding to remove any information that identifies the appellant as the perpetrator of child abuse or neglect.
 - 4) At any time prior to the commencement of the administrative hearing, the Department's legal representative may add or amend the allegations that support the indicated finding against the appellant. The Department's legal representative must notify the appellant and the AHU, in writing, of the new or amended allegation and provide the appellant with a concise statement of the facts that form the basis for the new or amended allegation. If the Department's legal representative adds or amends an allegation after the pre-hearing conference, but prior to the commencement of the administrative hearing, the appellant, upon request, may be entitled to a continuance for a reasonable period of time. This continuance shall not be attributed to the appellant.
- c) The Responsibility of the Department
- 1) At any time subsequent to the filing of an appeal, when the Department attorney determines that the appeal involves a minor who is the subject of a pending action under Article II of the Juvenile Court Act, he or she shall notify the minor's GAL/attorney as soon as is practicable, but not later than 7 days prior to the first hearing date.
 - 2) In an administrative hearing:
 - A) the Department carries the burden of proof of justifying the refusal to amend, expunge or remove the record; and
 - B) the Department must prove that a preponderance of the evidence supports the indicated finding, or that the record of the report is being maintained in a manner consistent with ANCRA and in accordance with 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services).

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- 3) The Department has an obligation to present evidence that creates a full and complete record, subject to Department rules and statutes on confidentiality.

(Source: Added at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.120 The Administrative Law Judge

- a) Appointment of the ALJ
The Chief Administrative Law Judge shall select a trained, impartial ALJ from the available pool to conduct the appeal hearing. The ALJ shall:
 - 1) be an attorney licensed to practice law in the State of Illinois;
 - 2) possess knowledge and information acquired through training and/or experience relevant to the field of child and family welfare law, including familiarity with Department rules, procedures and functions;
 - 3) not have been involved in the decision to take the action being appealed or have rendered legal advice to the decision-maker on the issue; and
 - 4) not have a personal or professional interest that interferes with exercising objectivity or have any bias against the parties or issues appealed. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.

- b) Functions of the ALJ
The Administrative Law Judge shall have all authority allowed under the Illinois Administrative Procedure Act [5 ILCS 100]. This authority shall include, but is not limited to, the following:
 - 1) conduct a fair, impartial and formal hearing in which the strict rules of evidence do not apply;
 - 2) provide for the recording of the hearing;
 - 3) inform participants of their individual rights and their responsibilities;
 - 4) conduct pre-hearing telephone conferences between the parties or their authorized representatives to provide information about the procedural aspects of the hearing, narrow the issues and discuss possible stipulations and contested points of law, in order to expedite the actual hearing;
 - 5) have the authority to recommend changes in the child abuse and neglect report in the State Central Register;

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- 6) take necessary steps to develop a full and fair record that contains all relevant facts;
- 7) administer an oath or an affirmation to all witnesses;
- 8) quash or modify subpoenas for good cause, including but not limited to relevance, scope, materiality and emotional harm or trauma to the subpoenaed witness;
- 9) allow into evidence all inculpatory and exculpatory evidence helpful in determining whether an indicated perpetrator abused or neglected a child, including oral and written reports and the investigative file, that the ALJ and the Director may rely upon to the extent of its probative value;
- 10) allow into evidence previous statements made by the child relating to abuse or neglect as hearsay exceptions;
- 11) preserve all documents and evidence for the record;
- 12) rule upon evidentiary issues and contested issues of law at the hearing or take matters under advisement pending issuance of the written opinion and recommendation;
- 13) order the removal of any person from the hearing room who is creating a disturbance, whether by physical actions, profanity or conduct, that disrupts the hearing;
- 14) identify the issues, consider all relevant facts and receive or request any additional information necessary to decide the matter in dispute, including but not limited to additional testimony, documents, exhibits, briefs, memoranda of law or post hearing briefs;
- 15) present a written opinion and recommendation to the Director after the record of the administrative hearing is completed or transcript is received, whichever is later. The written opinion and recommendation shall include a recommended decision on whether there is a preponderance of evidence of abuse or neglect based on information in the administrative record. The opinion shall contain findings of fact, summary of testimony and evidence, conclusions of law and a recommendation; and
- 16) the written opinion and recommendation must also include the basis for excluding any evidence or disallowing a physician or other professional from testifying by telephone pursuant to Section 336.170 (Testimony by Telephone).

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- c) The Chief ALJ shall also:
 - 1) ensure that the administrative hearing is scheduled at a time and place reasonably convenient for all parties;
 - 2) provide a written notice to the parties within 10 days after the receipt of a sufficient request for an administrative hearing, that shall contain the following information:
 - A) the date and time of the pre-hearing conference;
 - B) the reasons that may be deemed an abandonment of the request for a hearing, thus constituting a waiver of the right to a hearing;
 - C) a citation to the ANCRA provision that grants the Department of Children and Family Services the legal authority and jurisdiction to hold this hearing;
 - D) a reference to the particular Sections of the statutes and administrative rules involved;
 - E) the allegations that were indicated;
 - F) the consequences of the appellant's failure to participate at the pre-hearing conference;
 - G) the docket number assigned to this case;
 - H) the name and contact information of the Administrative Law Judge and all parties; and
 - I) a statement of the parties' rights during the administrative hearing.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.130 Consolidation and Severing Issues and Parties

- a) When common issues of fact or law are raised in more than one appeal, the Chief ALJ may consolidate the appeals into a single group hearing. Individuals shall be permitted to present their own cases separately. Nothing in this Section shall override confidentiality considerations.
- b) The Chief ALJ may also combine all appeals and issues involving a single appellant, whether arising under this Part or any other Part, into one hearing.

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- c) The Chief ALJ, if required for the fair and efficient administration of the administrative appeal hearing or to prevent possible prejudice to the appellant, may sever any party or any issue from the consolidated hearing. The party or issue severed from the consolidated hearing shall be heard separately.
- d) The Chief ALJ shall decide the order in which to hear any appeal or issue that has been severed.
- e) The Chief ALJ may delegate any decision under this Section to any ALJ who has been assigned to hear one or more of the appeals.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.140 Exchange of Information

- a) All requests for information must be in writing and sent, in advance of the hearing, to the party from whom the information is sought. Any requests for information from a party must be served on the party and on the AHU. A party, without leave of the ALJ, may request from any other party:
 - 1) a list of witnesses to be called at the hearing; and
 - 2) copies of all documents that a party intends to present to the Administrative Law Judge at the hearing. The Department does not need to send a copy of the investigative file to the appellant when the Department has previously sent a copy of the investigative file to the appellant pursuant to Section 336.80.
- b) All requests for information shall be served on all other parties or their authorized representative. Copies of all requests for information shall be filed with the AHU. All requests for information shall be answered within 10 days after receipt unless, upon good cause shown, leave is sought for additional time to answer.
- c) A party may exercise any rights to access any Department record relevant to the investigation and indicated finding under 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services).
- d) No discovery, described in Supreme Court Rule 201 et seq., shall be permitted prior to a hearing except by permission of the ALJ, when good cause is shown.
- e) Hearings shall not be delayed to permit the exchange of information unless timeliness and due diligence is shown by the party seeking the information.

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- f) If a party fails to answer a request for information, the ALJ may enter any appropriate order, including but not limited to:
- 1) a continuance of any hearing until the request for information is answered. The ALJ shall make a determination as to which party should be attributed the time for the continuance;
 - 2) prohibit the testimony of any witness not disclosed in the answer to the request for information;
 - 3) prohibit the introduction of any document or evidence not disclosed in an answer to the request for information; or
 - 4) in determining whether to prohibit a witness from testifying or prohibit the introduction of evidence, the ALJ shall consider the need to develop a full and accurate record, including the reasons why a witness or document was not disclosed, and the interests of justice. The ALJ shall entertain an offer of proof that will be made part of the record.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.150 Continuances

- a) No continuance of a scheduled pre-hearing conference or hearing shall be granted by the ALJ to any party except for good cause shown.
- 1) Good cause includes, but is not limited to:
 - A) sickness or death in the immediate family of the appellant, the Department's legal representative or the authorized representative of the appellant;
 - B) court or administrative hearing dates scheduled prior to the issuance of the notice of hearing; and
 - C) the unavailability of a witness due to unforeseen and unavoidable circumstances.
 - 2) A continuance for good cause shall not be considered delay on the part of any party.
- b) No request for a continuance shall be granted without notice to the parties, including, but not limited to, the Department's legal representative and a minor's attorney/GAL. Only the parties shall have an opportunity to object on the record. All requests for continuances shall be disposed of by written order. All requests for continuances shall be addressed by the ALJ in a timely manner.

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- c) If a continuance is requested or agreed to by an appellant, the time period between the request for continuance and the continued hearing date shall not be considered a delay on the part of the Department in issuing and implementing its final administrative decision.
- d) If a continuance is requested due to the lack of a certified court reporter or interpreter, the party seeking a continuance must demonstrate due diligence in seeking that service for the hearing date.
- e) Notices of a continued hearing date need not include any restatement of the rights of the parties.
- f) If a hearing is commenced and needs to be continued to another date, the time period between the commenced hearing date and the continued hearing date shall be tolled.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.160 Attendance of Witnesses

The appellant and the Department's legal representative may subpoena any witness identified on the witness list and any witness or documents discussed at the pre-hearing conference, pursuant to Section 336.140, by requesting that the Chief ALJ request a subpoena within the timeframe ordered by the ALJ. Witness fees and travel expenses for persons other than Department employees are the responsibility of the party requesting the subpoena.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.170 Testimony by Telephone

- a) For good cause shown, the ALJ may, on the ALJ's own motion or the motion of any party, allow a witness to testify at the administrative hearing by telephone.
- b) It is presumed that physicians and other professionals, in their professional capacity, shall be permitted to testify by telephone, unless good cause is shown as to why in-person testimony is necessary. For the purposes of this Part, "professionals" shall include, but not be limited to, medical personnel, school employees, social service and mental health staff, law enforcement personnel, and child care workers. If in-person testimony is necessary, the opinion and recommendation of the ALJ shall set forth that testimony by telephone was disallowed and provide the basis for the decision.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

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Section 336.180 Interpreters and Translation of Documents

- a) A party whose language of preference is not English, or who will require communication assistance, shall declare his or her language of preference to the ALJ or the Department's legal representative at the pre-hearing conference or at the earliest opportunity. The Department shall provide an interpreter at no cost to the party.
- b) At the time of the pre-hearing conference, if the ALJ determines that translation of documents is necessary to the conducting of a full and fair hearing, an order shall be entered directing the Department to translate the relevant documents. All due diligence shall be applied to the Department's translation of relevant documents. A request for translation of documents shall not be considered a delay on the part of the Department or the appellant.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.190 Grounds for Dismissal

The Chief ALJ or the ALJ shall dismiss the appeal on his or her own motion or on the motion of any party:

- a) when the issue is not regarding a child abuse or neglect report as defined in 89 Ill. Adm. Code 300 (Reports of Child Abuse and Neglect);
- b) when there is a pending juvenile court action or criminal court action involving the same set of circumstances that gave rise to the indicated finding;
- c) when there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator;
- d) when the request for the appeal was not received within 60 calendar days after the postmarked date of the notice that the report was indicated;
- e) when the request for the appeal is not received within 60 calendar days following the conclusion of any criminal court action in the circuit court or after adjudication in any juvenile court action concerning the circumstances that give rise to the indicated finding;
- f) when the appeal has been withdrawn in writing;
- g) when the appeal has been abandoned pursuant to Section 336.200; or
- h) when the issue is not within the jurisdiction of the AHU as set forth in Section 336.60.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

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Section 336.200 Abandonment of Appeal/Default

- a) The AHU will declare that the Department or appellant has abandoned the appeal when, during the pre-hearing conference or the hearing:
 - 1) the Department's legal representative, the appellant or the appellant's authorized representative, without good cause, fails to participate after receiving written notice from the AHU and after the ALJ has waited a reasonable time for the Department's legal representative, appellant or appellant's authorized representative to appear; or
 - 2) the appellant failed to notify the Chief ALJ of a change of address and a notice of the administrative hearing, sent to the appellant's last known address, was returned as "undeliverable", "unclaimed", "refused", "moved", "no forwarding address", or for similar circumstances by the US Postal Service or other third party delivery service.
- b) Good cause for failure to appear includes but is not limited to:
 - 1) death or serious illness in the immediate family of the appellant, the appellant's representative, any witness, or the Department's legal representative;
 - 2) failure of the AHU to give notice of the proceeding to the appellant or the appellant's representative at the last known address available to the AHU; or
 - 3) failure of the AHU to give notice by fax, inter-office mail or electronic mail to the Department's legal representative.
- c) When the Department's legal representative fails to appear at a pre-hearing conference or hearing, without good cause, and without having received a continuance, the ALJ may issue orders as are appropriate, including, but not limited to, a finding of default for failure to appear or participate. All orders regarding a Department legal representative's failure to appear at a pre-hearing or hearing shall be sent to the attention of the Department's General Counsel.
- d) Any party seeking to vacate an order of abandonment or default shall file a motion within 14 days after notice of the entry of an order of abandonment or default, showing good cause why the party failed to appear or participate. All such motions will be timely ruled upon by the ALJ. Copies of the motion shall be served upon the ALJ, the AHU and the opposing party.

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

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Section 336.210 Record of an Administrative Hearing

The record of the administrative hearing and the final administrative decision shall be maintained by the AHU and includes the recorded proceedings, any exhibits admitted into evidence, and any offers of proof. All final administrative decisions shall be available to any party for public inspection during regular business hours. However, personal identifying information and other confidential information shall be deleted in accordance with 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services).

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.220 Final Administrative Decision

a) The Final Administrative Decision

- 1) The Director of the Department shall issue the final decision within 35 calendar days after receipt of a timely and sufficient request for an expedited appeal, unless extended by action of the appellant. Within the same 35 day time period, the Director shall receive and accept, reject, amend or return to the AHU for further proceedings the ALJ's recommendation with respect to the expedited appeal. The Director's decision is the final administrative decision of the Department.
- 2) The Director of the Department shall issue the final decision within 90 calendar days after receipt of a timely and sufficient request for an appeal, unless extended by action of the appellant. Within the same 90 day period, the Director shall receive and accept, reject, amend or return to the AHU for further proceedings the ALJ's recommendation. The 90 day time period may be extended by the actions of the appellant. The Director's decision is the final administrative decision of the Department.

b) Notice of the Availability of Judicial Review

The Department shall include a notice to appellants as part of the final administrative decision. This notice shall advise the appellants that, under the Administrative Review Law [735 ILCS 5/Art. III], they may seek judicial review of the final administrative decision within the statutory time frame, if the final administrative decision is unfavorable to them.

c) Who Receives Copies of the Final Administrative Decision

The appellant or authorized representative, the Department's legal representative, the Department child protection unit, the ALJ, the Chief ALJ, and the SCR shall receive a copy of the final administrative decision.

APPEAL OF CHILD ABUSE AND NEGLECT INVESTIGATION FINDINGS
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- d) Notifying Others of the Decision
 - 1) The following persons shall receive a notice of the final administrative decision from the AHU:
 - A) the Illinois Department of Financial and Professional Regulation, district, regional and private school superintendents and the State Board of Education when they have been notified that an appeal has been filed in accordance with 89 Ill. Adm. Code 300 (Reports of Child Abuse and Neglect), Section 300.140;
 - B) administrators of child care facilities and Department licensing staff when the appellant is an employee of a child care facility; and
 - C) supervisors or administrators notified in accordance with 89 Ill. Adm. Code 300.100(i).
 - 2) The following persons shall receive a notice of the final administrative decision, if the decision amends, expunges or removes any record made under ANCRA Section 7.17:
 - A) parents or personal guardians of the child victims if they are not the same as the appellant;
 - B) the mandated reporter who originally made the report of child abuse or neglect; and
 - C) the juvenile court judge and guardian ad litem and/or attorney for a minor (when a State ward is involved or the minor is the subject of a petition under Article II of the Juvenile Court Act).

(Source: Amended at 41 Ill. Reg. 15260, effective December 6, 2017)

Section 336.230 Severability of This Part

If any Court of competent jurisdiction finds that any Section, clause, phrase, or provision of this Part is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portions of this Part.

(Source: Added at 24 Ill. Reg. 7660, effective June 1, 2000)

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DEPARTMENT OF CHILDREN AND FAMILY SERVICES

POLICY GUIDE 2013.09

**PART 300 REPORTS OF CHILD ABUSE AND NEGLECT
PART 336 APPEAL OF CHILD ABUSE AND NEGLECT INVESTIGATION FINDINGS**

DATE: December 31, 2013

TO: DCFS and POS Agency Staff

FROM: Denise Gonzales, Acting Director



EFFECTIVE: January 1, 2014

I. PURPOSE

The purpose of this Policy Guide is to provide staff with instruction for the implementation of pending amendments to **Rule 300 Reports of Child Abuse and Neglect** and **Rule 336 Appeal of Child Abuse and Neglect Investigation Findings** that were brought about by changes made to ANCRA in PA 98-0453 and 98-0487. This Policy Guide shall remain in effect pending the completion of the rulemaking process and until the subsequent revision of **Procedures 300** is complete.

II. PRIMARY USERS

Primary users of this Policy Guide are the Department's Investigation Specialists/ Investigation Supervisors and State Central Register (SCR) staff.

III. OVERVIEW

Public Act 98-453 amends Sections 7.7, 7.14, 7.16, and 7.21 of the Abused and Neglected Child Reporting Act. The Department will initiate rulemaking to implement the following requirements:

- The Department shall establish criteria and standards for labeling an “unfounded” report as an “intentional false report.” Per PA 98-453, the reporter of a case retained as intentionally false will be permitted to submit a statement regarding the report, unless the reporter has been convicted of knowingly transmitting a false report to the Department.
- Within 45 days of classifying a report as “indicated” or “unfounded”, the Department shall transmit a copy of the report to the child’s guardian ad litem (GAL), when the child is the subject of a juvenile court proceeding and the GAL has been appointed to represent the child in that proceeding.



- A child shall have the right to participate and be heard in an administrative (appeal) hearing through his/her attorney or GAL, when i) the child is the victim named in the report that is the subject of the appeal hearing; ii) the child is the subject of a juvenile court proceeding; and iii) the report was made while a GAL was appointed to represent the child in that proceeding.
- When the Department determines that a report is "unfounded", the child's attorney or GAL may request a review of the investigation within 10 days of the date of notification of the proposed final finding, if the child named in the report is also a child for whom the attorney or GAL has been appointed. The GAL shall send a written request, via U.S. Mail or fax, within 10 days of the date of notification of the proposed final finding. The "date of notification of the final finding" is the date the attorney or GAL receives a copy of the report from the Department. The review must be conducted by a Department employee outside the supervisory chain of the assigned investigation specialist and shall be conducted before entering a final finding (i.e., "indicated" or "unfounded") for the report in SACWIS.

The Department will also initiate rulemaking to implement Public Acts 98-487, amending the following provisions in Section 7.16 of ANCRA:

- The perpetrator named in the notification of the completion of an investigation may request the Department to amend or remove the record of a report from the register (SCR). (The underlined language replaces "subject of the report.")
- The 60-day deadline for filing a request for an appeal hearing shall be tolled until after the conclusion of any criminal court action in the circuit court or after adjudication in any juvenile court action concerning the circumstances that give rise to an "indicated" report.
- The perpetrator shall have the right to a timely hearing within the Department.
- There shall be no right to a hearing on the ground of the report's inaccuracy if there has been a court finding of child abuse or neglect or a criminal finding of guilt as to the perpetrator.
- The decision resulting from the appeal hearing shall be made, in writing, at the close of the hearing, or within 60 days thereof. (Section 7.16 previously required a decision within 45 days.)

IV. INSTRUCTIONS

GAL Review of Unfounded Reports

State Central Register (SCR) Staff

When taking a report of alleged abuse or neglect, it is crucial that SCR (hotline) staff identify in SACWIS those reports involving wards as an alleged victim and/or perpetrator. Hot line staff shall ensure **each** case involving a ward is so identified.

SCR shall be responsible for tracking the 10 day time period for all GAL requests to review an **unfounded** investigation.

- For Cook County- Tracking shall be based on the date of acknowledgement of receipt of the CANTS 9a in the Public Guardian's Office. (Due to the proximity of the Public Guardian's Office, hard copy documents with the CANTS 9a and the complete redacted investigative file, including a completed CANTS 13 when a police report is part of the file, will be delivered there by the designated DCFS Legal staff person.)
- For Downstate counties- Designated SCR staff shall send the CANTS 9a and complete redacted investigative file, including a completed CANTS 13 when a police report is part of the file, to the GAL via certified mail or UPS. Tracking shall be based on the date of acknowledgement of receipt of the CANTS 9a via certified mail return card or UPS signature of receipt.

Investigative Specialists and Supervisors

The Investigation Specialist shall verbally notify the GAL of the recommended **unfounded** determination, after the recommended finding has been reviewed by the Investigation Supervisor and Area Administrator, and discuss the recommended determination with the GAL. If the GAL disagrees with the recommended determination, the Investigation Specialist shall immediately notify his or her supervisor of the concerns raised by the GAL. The Investigation Supervisor shall contact the GAL to resolve his/her issues and to determine if there are additional investigation activities that need to be completed. When a resolution cannot be reached, the supervisor shall inform the GAL of his/her right to request a review of the intent to **unfound** the investigation. The supervisor and Investigation Specialist shall use SACWIS collateral notes to document the notification of the recommended determination and all attempts to resolve any issues identified by the GAL. Should a GAL request a review of the intent to unfound the investigation, such review shall take place prior to the final

determination being entered into SACWIS and shall be conducted by one of the designated Area Administrators outside the supervisory chain of the assigned investigator.

Department rules and procedures already require the Department to verbally notify a child's GAL of a recommended investigation determination (i.e., indicated, unfounded, or undetermined) of reports involving the child, including a child who has been named as a perpetrator in the report (the GAL has the right to review an investigation only when the intent is to **unfounded**). In order to ensure that the required notification takes place, the Investigation Specialist shall add the child's GAL to the SACWIS investigation as a collateral. In Cook County the GAL will always be the person fulfilling the role of the Public Guardian in the Office of the Cook County Public Guardian, Juvenile Division. Downstate Investigation Specialists will have to determine the name of the GAL representing the child from the juvenile court in the county where the child resides.

- The Investigative Specialist shall enter interviews with a GAL into a collateral note, including the GAL's mail address. (Adding the mail address into a note will generate the address into the final finding letter sent to the GAL.)
- Once the Investigative Specialist has completed all required investigative tasks and **intends to unfound** an investigation involving a ward, the case must be reviewed by their supervisor and Area Administrator, who will verify documented discussions with the GAL regarding the finding and efforts to resolve any issues of contention.
- The Investigative Specialist shall enter the recommended finding to 'unfounded' on the allegation tab in SACWIS and the case will remain in a pending status until a final finding is entered.
- The Investigative Specialist shall verify that the GAL's address is correct and then complete the CANTS 9a.
- If a **mandated reporter** requests a review after an unfounded final finding, SCR will notify the Area Administrator who conducted the GAL review, if one has been conducted, to contact the mandated reporter and conduct that review as well.

Processing of CANTS 9a and hard copy documents

The CANTS 9a and all hard copy documents not contained in SACWIS shall be scanned and emailed to designated DCFS staff within 48 hours (two business days) of the Area Administrator's review. The contact persons responsible for processing the CANTS 9A and all hard copy documents are:

Cook County- Rhonda Laye in the Office of Legal Services; and

Downstate- Polly Gahr in SCR.

Note: All emails of the CANTS 9a and hard copy documents should be cc'd to Polly Gahr.

FOR COOK- Rhonda Laye will deliver the redacted SACWIS investigation and hard copy documents, including a completed CANTS 13 when a police report is part of the file, with the CANTS 9a to the Office of the Public Guardian, notifying them of intent to **unfound**, and request a signed **acknowledgment of receipt** of the investigative file/documents. In case of a GAL request for a review, once the signed acknowledgment of receipt is obtained the file must be emailed to Polly Gahr at SCR.

DOWNSTATE: After the Investigative Supervisor and Area Administrator have reviewed a recommended finding to **unfound** a report, the Investigative Specialist shall complete the CANTS 9a, print and redact the SACWIS file and all hard copy documents, then scan and email those documents, including a completed CANTS 13 when a police report is part of the file, to Polly Gahr at SCR.

Unfounded Reports Retained as Intentionally False Reports

State Central Register (SCR)

The perpetrator in a report with an unfounded final determination has the right to request the unfounded case be retained as intentionally false. SCR retains such reports in SACWIS for a period of 5 years if the perpetrator's request was submitted to the Department in writing within 10 days of being notified of the final finding of the investigation.

- Designated SCR staff shall notify the reporter of such cases that a request has been made to retain the identified report as intentionally false **and** that the reporter has the right to make a statement regarding the report, unless the reporter has been convicted of knowingly transmitting a (previous) false report to the Department.
- Statements made by reporters of unfounded cases held as intentionally false shall be retained by SCR. SCR shall transmit a copy of the statement to the assigned investigative specialist and refer the case to the local State's Attorney, when appropriate. Statements made by a reporter must be submitted to the Department in writing within 10 days of notification.

V. QUESTIONS

Questions concerning these revisions may be directed to the Office of Child and Family Policy at 217/524-1983 or e-mail through Outlook at OCFP-Mailbox or for non-Outlook users at cfpolicy@idcfs.state.il.us

VI. ATTACHMENT

CANTS 9a Notification of Intent to Unfound a Report of Child Abuse and/or Neglect of a Ward

This form can be accessed on the T Drive.

VII. FILING INSTRUCTIONS

Place one copy of this Policy Guide behind **Rule 300 Reports of Child Abuse and Neglect** and behind **Rule 336 Appeal of Child Abuse and Neglect Investigation Findings**.

State of Illinois
Department of Children and Family Services

**NOTIFICATION OF INTENT TO UNFOUND A REPORT OF CHILD ABUSE AND/OR
NEGLECT INVOLVING A WARD**

TO: (GAL) _____

DATE: _____

The Illinois Department of Children and Family Services has investigated the report of suspected child abuse and/or neglect listed below, and intends **to UNFOUND** the report.

Please read this carefully.

Attached is a copy of a **PENDING** investigative file on a report of abuse/neglect of a ward, with a recommendation to unfound. This file is **CONFIDENTIAL** and **CANNOT** be re-disclosed or redistributed for any purpose other than to request a review.

Investigation Name: _____

Address _____

City, State, Zip Code _____

SCR No: _____

1. Children reported to be abused or neglected or involved as a perpetrator:

2. The reported abuse or neglect is alleged to have occurred at:

3. The Department intends to UNFOUND the report for the following allegation(s):

4. An unfounded report for the above allegations will be kept on the State Central Register for 1-3years, pursuant to statute 325 ILCS 7.7.

ADMINISTRATOR'S REVIEW

Before the decision to UNFOUND this report is made, you, as the minor's attorney and GAL, have the opportunity to request a review with a Child Protection Administrator who has not been involved in the investigation. The Administrator's Review will allow you to respond to the allegations and the basis of the intent to unfound. You can provide any additional information you may have, ask questions, seek clarification, and provide any facts to be explored regarding the incident and provide written statements and documents.

You must request the Administrators Review, IN WRITING, within 10 days of RECEIPT of this notice and the pending investigation file. You may use the attached form to submit your request for review.

The assigned Administrator will then contact you by phone to schedule a date and time for the review.

The Administrator's Review provides you with an opportunity to present any information that you believe can or should help the Department make the most accurate decision regarding the current allegations of child abuse and/or neglect.

After the Administrator's Review, you will be given written notice of the final finding decision.

COOK COUNTY ONLY

ACKNOWLEDGEMENT OF RECEIPT

THIS COPY TO BE COMPLETED, SIGNED AND RETURNED TO DCFS

In connection with SCR Number, _____ I acknowledge that I received the following:

1. Notice of Intent to UNFOUND, CANTS 9a
2. The Investigative File

Printed Name _____

Printed Address _____

Telephone Number _____

Signature _____

Date _____

COOK COUNTY

ACKNOWLEDGEMENT OF RECEIPT OF INVESTIGATIVE FILE

THIS COPY TO BE COMPLETED, SIGNED AND RETURNED TO DCFS

**REQUEST FOR REVIEW OF INTENT TO UNFOUND A REPORT OF CHILD
ABUSE/NEGLECT OF A WARD**

TO: SCR Administrator
406 E. Monroe, Mail Station #30
Springfield, IL 62701-1498
FAX: 217-785-0395

RE: GAL REQUEST FOR ADMINISTRATOR'S REVIEW

I have been advised that the Department intends to UNFOUND its investigation for SCR NUMBER: _____.

I am the court appointed Guardian Ad Litem and wish to request a review of the intent to unfound this report.

I am attaching copies of documentation/other relevant information I wish to be considered or will do so at the time of the review, if deemed necessary.

I may be contacted per below to schedule a date and time for an Administrator's review:

GAL NAME: _____

GAL PHONE NUMBER: _____

I prefer the following dates/times:
