

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER f: GENERAL ADMINISTRATION

PART 430

OFFICE OF THE INSPECTOR GENERAL (OIG)

Section

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AUTHORITY: Implementing and authorized by Section 35.5 and 35.6 of the Children and Family Services Act [20 ILCS 505/35.5 and 35.6] and Section 5 of the Illinois Administrative Procedures Act [5 ILCS 100/5].

Source: Adopted at 25 Ill. Reg. 14828, effective November 1, 2001; amended at 33 Ill. Reg. 4914, effective April 15, 2009.

Section 430.10 Purpose

The purpose of this Part is to explain the internal review process for the Department's Office of Inspector General (OIG) investigations. This includes the filing of complaints, OIG records retrieval, subpoena power, confidentiality of information, and OIG reports.

Section 430.20 Definitions

"Administrator" means the person charged with administration of the Department Office, Private Agency or Licensed Child Care Facility. In the case of foster homes, it refers to either foster parent.

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

"Department Employee" means a full, part-time or contractual employee of the Department.

"Department Office" means a program, division or office of the Department.

"Director" means the Director of the Department.

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“Employee” means a person employed by, or on contract with, the Department, a private agency or a licensed child care facility.

“Impounding” means requiring immediate production of records.

“Licensed Child Care Facility” means a foster home, day care center, child care institution, day care home, group day care home, secure care facility, group home, child welfare agency or youth emergency shelter, as defined in Section 10 of the Child Care Act [225 ILCS 10].

“Licensing Standards” means all rules and laws applicable to the operation and licensure of the particular licensed child care facility.

“Malfeasance” means a wrongful act that the actor has no legal right to do, or any wrongful conduct that affects, interrupts, or interferes with performance of an official duty.

“Management” means a private agency or Department employee who either supervises subordinate employees or manages or administers a program or division.

“Misfeasance” means the improper performance of some act that a person may lawfully do.

“Obstruction” means hindering or preventing from progress, stopping or delaying the progress of, or making the progress of an investigation difficult or slow.

“OIG” or “Inspector General” means the Office of Inspector General of the Department of Children and Family Services and includes the Inspector General, investigators and employees of the office.

“Private Agency” means a child welfare agency licensed through 89 Ill. Adm. Code 401 (Licensing Standards for Child Welfare Agencies), that contracts with the Department.

“Private Agency Employee” means a full or part-time employee of the private agency.

“Record” means any recording, either in written, audio, electronic transmission or computer storage form, including, but not limited to, drafts, memoranda, notes, reports, computer printouts, notations and messages, including, but not limited to, medical records, mental health records, case files, clinical records, financial and administrative records.

Section 430.30 Office of Inspector General (OIG) Investigations

- a) Investigations by the Office of Inspector General (OIG)
 - 1) The Office of Inspector General (OIG) of the Department of Children and Family Services investigates allegations of, or incidents of, possible misconduct, misfeasance, malfeasance, or violations of rules, procedures or laws by an employee, foster parent, service provider, or a contractor of the Illinois Department of Children and Family Services, or employees of

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the service provider or contractor. Any investigation conducted by the Inspector General shall be independent and separate from an investigation mandated by the Abused and Neglected Child Reporting Act [325 ILCS 5].

- 2) The Inspector General investigates deaths or serious injuries in foster homes, child welfare institutions, independent living programs and other facilities licensed by the Department, as well as deaths or serious injury when there was an open child welfare service case or child protection investigation by the Department within the preceding 12 months.
 - 3) The Inspector General investigates complaints relating to child welfare employee licensure pursuant to this Part and 89 Ill. Adm. Code 412 (Licensure of Direct Child Welfare Services Employees and Supervisors).
- b) Operation of the Office of Inspector General (OIG)
- 1) The OIG shall be independent of the operations of the Department and shall report to the Director and perform all other duties the Director may designate.
 - A) The files of the Inspector General shall remain separate from other files of the Department and shall not be open for review by the Department or the general public.
 - B) Investigations will be conducted separately from any Department investigations, including Independent Utilization Reviews and reviews or audits conducted pursuant to 89 Ill. Adm. Code 434 (Audits, Reviews and Investigations).
 - 2) The Inspector General shall have access to all information and personnel necessary to perform the duties of the office.
 - 3) The Inspector General shall be the primary liaison between the Department and the Illinois State Police. As such, Department management personnel shall report all known criminal acts impacting on professional duties of employees to the Inspector General, who will coordinate with the Illinois State Police.
 - 4) A full OIG investigation consists of:
 - A) Retrieval of relevant records, either through subpoena, impounding or voluntary production;
 - B) Review of all relevant documentation; and
 - C) Interviews of all relevant persons.

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Section 430.40 Complaints

- a) The Office of Inspector General accepts complaints in writing from the general public. The OIG also maintains a toll-free hotline for public complaints. Anyone wishing to file a complaint with the office may send written comments to:

Office of the Inspector General
Illinois Department of Children and Family Services
2240 West Ogden, Chicago, IL 60612
Call toll-free at 1-800-722-9124.

- b) Complaints will be evaluated to determine if they suggest possible misconduct, misfeasance, malfeasance, or violations of rules, procedures or statutes by a:
- 1) DCFS employee;
 - 2) foster parent;
 - 3) service provider or its employees; or
 - 4) contractor of DCFS or its employees.
- c) All complaints shall be reviewed to determine whether a full investigation is warranted.
- d) Complaints will not be accepted unless:
- 1) The complaint alleges misconduct, misfeasance or malfeasance or a violation of rules, procedures or statutes or a basis for employee licensure action pursuant to 89 Ill. Adm. Code 412.
 - 2) The complaint is against a person within the jurisdiction of the Inspector General's office.
 - 3) The allegations can be independently verified through investigation.
- e) The Inspector General will determine within 2 weeks after receipt of a complaint, whether it will be accepted for an initial investigation. A full investigation will include an examination of all relevant documents and interviews of relevant persons.
- f) Complaints alleging basis for a child welfare services employee licensure action will be submitted to the appointed staff of the Child Welfare Employee Licensure Board and will be evaluated pursuant to 89 Ill. Adm. Code 412.60 (Investigation, Notice and Proceedings Involving Formal Complaints).

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Section 430.50 Cooperation with OIG Investigations

- a) All Department and private agency employees, foster parents and owners, operators and employees of licensed childcare facilities shall cooperate with the OIG. Cooperation includes, but is not limited to:
 - 1) permitting full access to, and production of, information and records in accordance with this Part. Information and records can be shared with the OIG without violating confidentiality provisions;
 - 2) fair and honest disclosure of documents and information reasonably requested by the Inspector General in the performance of his/her duties;
 - 3) management encouraging employees to fully comply with reasonable requests of the Inspector General in the performance of his/her duties;
 - 4) management prohibiting retaliation against employees for providing information or records or complaining to the Inspector General;
 - 5) management being prohibited from requiring employees to seek supervisory approval prior to filing a complaint with, or providing information or records to, the Inspector General;
 - 6) employees providing complete and truthful answers to questions; and
 - 7) employees not willfully interfering or obstructing the OIG investigation.
- b) Failure to cooperate with an OIG investigation may result in discipline, up to and including discharge, or other sanction.
- c) Any person who fails to appear in response to a subpoena issued by the OIG or to answer any question or produce any books or papers relevant to an investigation conducted in accordance with this Part, or who knowingly gives false testimony in relation to such investigation, is guilty of a Class A misdemeanor. *The power to subpoena or to compel the production of books and papers, however, shall not extend to the person or documents of a labor organization or its representatives insofar as the person or documents of the labor organization relate to the function of representing an employee subject to an investigation under this Part [20 ILCS 505/35.5(g)].*
- d) Union representation, in conformance with Article IX, Section 6(b) of the AFSCME Agreement with the State of Illinois, dated July 1, 2000-June 30, 2004, shall not be considered obstruction.

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Section 430.60 Records Retrieval

- a) In conducting investigations, the OIG shall access all relevant records, either through subpoena, impounding or voluntary production. The OIG investigator may impound the original of any record, file, document or paper necessary for the investigation from any Department office, licensed child care facility, or private agency that is pertinent to an investigation conducted pursuant to this Part. All case files, licensing files, medical records, financial and administrative records, and all records required to be maintained pursuant to applicable licensing rules, shall be subject to production and review by the Inspector General without subpoena.
- b) Compliance with impounding requires:
 - 1) production of all records noted;
 - 2) a diligent search to ensure that all appropriate records are included in the materials forwarded to the OIG;
 - 3) a continuing obligation to immediately forward to the OIG any relevant records received, located or generated after the date of the impound.
- c) The OIG may impound original records from any Department office, licensed child care facility, or private agency relevant to an investigation conducted in accordance with this Part.
 - 1) The OIG shall seek access in a manner that respects the dignity and human rights of all persons involved, maintains the integrity of the investigation and does not unnecessarily disrupt programs and/or services. When advance notice to an administrator or his or her designee is not provided, the OIG shall, upon arrival at the private agency, licensed child care facility or Department office, request that an on-site employee notify the administrator or his or her designee of the OIG's arrival.
 - 2) During business hours, the OIG may make an unannounced visit to a Department office, licensed child care facility or private agency to impound records relevant to an investigation.
 - 3) If it is necessary to impound records after business hours, the investigator shall seek access to a Department office, licensed child welfare facility or private agency by contacting the relevant administrator.
 - 4) The administrator may be asked to sign a Statement of File Integrity and Security stating, when the file was secured for impounding:

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- A) that the administrator has made a diligent search of the office, agency or facility to determine that all appropriate documents in existence at the time of impounding were produced;
 - B) that the administrator agrees to forward any relevant documents received, located or generated after the impound to the OIG immediately;
 - C) persons who have had access to the material since it was secured; and
 - D) whether, to the knowledge of the administrator, any documents were removed or added to the file since it was secured.
- 5) The OIG will permit an employee of the private agency, child welfare facility, or Department office to make photocopies of the original file within a reasonable period of time in the presence of the investigator for purposes of creating a working file in a manner that assures confidentiality.
- 6) The OIG shall present to the administrator or other employee of the private agency, Department office or licensed child care facility, a copy of the Notice of Impounding/File Retrieval, stating the date of impounding or retrieval and the titles of files impounded or retrieved.
- 7) Except in investigations involving death or serious injury, the OIG shall return the original impounded file as soon as practicable, but no later than 10 working days after the date of impoundment. The OIG shall return a copy in lieu of an original document whenever a copy satisfactorily cannot duplicate information contained in the original document and, on the face of the document, the OIG shall indicate that it is a copy and where the original can be located. Copies of impounded documents relevant to the findings of the investigation will be retained by the OIG for a minimum of 10 years.
- 8) For death investigations, the original file shall be returned to the DCFS Office of Legal Services, upon completion of the investigation or any subsequent proceedings resulting from the investigation, but the OIG may retain copies or originals of the documents for the investigative file. The OIG shall return a copy, in lieu of an original document, whenever a copy satisfactorily cannot duplicate information contained in the original document and, on the face of the document, the OIG shall indicate that it is a copy and where the original can be located.

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- 9) All investigations conducted by the OIG shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

Section 430.70 Administrative Leave

Whenever an employee of the Department or a private agency is placed on administrative leave or desk duty as a result of an interim OIG recommendation, the administrative leave or desk duty shall not exceed 90 days.

Section 430.80 Subpoena Powers

- a) *The Inspector General shall have the power to subpoena witnesses and compel the production of records pertinent to an investigation authorized under this Part.*
- b) *The OIG may not subpoena witnesses or compel the production of records from a labor organization or its representatives, insofar as the witness or record sought relates to the function of representing an employee subject to investigation under this Part.*
- c) *Any person who fails to appear in response to a subpoena or to answer any question or produce any records pertinent to an investigation under this Part, except as otherwise provided in subsection (b) of this Section, or who knowingly gives false testimony in relation to an investigation under this Part is guilty of a Class A misdemeanor. [20 ILCS 505/35.5(g)]*

Section 430.90 Confidentiality

- a) OIG investigations access information that is confidential pursuant to numerous State and federal statutes and administrative rules. OIG reports are confidential because they contain information gleaned from these confidential records. OIG reports shall not be distributed beyond the Department or private agency that is the subject of the report without the consent of the Inspector General.
- b) The OIG may share confidential information with the Illinois State Police (ISP) when it refers cases for possible criminal investigation or prosecution, or when conducting joint investigations with ISP, or pursuant to an intergovernmental agreement; provided, however, that ISP agrees not to use the confidential information for any other purpose and agrees to seek a protective order before redisclosing the information.
- c) The OIG shall redact confidential information, as required by law and/or 89 Ill. Adm. Code 431(Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services).

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- d) OIG reports shall not be the subject to disclosure under the Freedom of Information Act [5 ILCS 140].
- e) The Department and the OIG shall protect from retaliation any person who files a complaint or provides information in good faith. To protect persons from retaliation, the OIG may withhold the identity of sources of information.

(Source: Amended at 33 Ill. Reg. 4914, effective April 15, 2009)

Section 430.100 OIG Reports

- a) The Inspector General's Report to the Director shall be in writing and shall contain recommendations. The OIG may recommend systemic reform or case-specific action, including a recommendation for discharge or discipline of either Department or private agency employees or for sanctions against a private agency or foster parent. Individual OIG investigators may not make recommendations for discipline. All recommendations to pursue discipline must be in writing and must be signed by the Inspector General for consideration by the Director. Private agencies that are the subject of reports and Department management shall review and assess whether practice and systems issues raised by individual case-based OIG reports may offer guidance in remedying failings in the field.
- b) Reports to the Director
 - 1) Reports will be shared with the Director within one week after completion.
 - 2) After a report is submitted to the Director, the Director shall determine whether to accept, reject, or request modification of the recommendations contained in the report.
 - 3) If a recommendation is not accepted, the Inspector General may delete or modify the recommendation.
 - 4) When the Director has accepted the recommendations contained in the report, portions of the report shall be provided to the private agency that is the subject of a recommendation and with those involved in the implementation of the recommendation. Those receiving any OIG report may not further distribute the report or any confidential information contained in the report.
- c) The Inspector General and the Director of DCFS may distribute the report to: the private agency or Department office that is currently handling the child or family case; the juvenile court judge before whom the child or family's case is pending; or the children's guardian ad litem, to the extent that doing so is relevant to the child's welfare. Those receiving OIG reports pursuant to this subsection (c) may not further disclose the report or any confidential information contained in the report.

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- 1) Whenever the OIG determines that sharing a report with either the court or the current child welfare agency is necessary, it will notify both the Director and the private agency involved that the report is being disseminated.
 - 2) Notification is not required where reports are redacted for use as teaching tools, including use as appendices to the OIG Annual Report.
 - 3) OIG reports disseminated pursuant to this Section, other than those redacted and disseminated as teaching tools, may not be further disseminated, without the approval of the Director.
- d) An OIG report that identifies misfeasance, malfeasance or misconduct of a Department employee or private agency employee that is relevant to providing appropriate supervision of the employee, may be shared with the Department office or private agency for which the employee works. The employer may not further distribute the OIG report or any confidential information contained in the report.
- 1) Recommendations Concerning a Private Agency or Private Agency Employee
 - A) When the Director has accepted recommendations concerning a private agency or private agency employee, the Inspector General shall transmit a copy of the report to the executive director of the private agency within 15 days after the date that the recommendations were accepted. If the Director has not accepted recommendations concerning a private agency, the OIG report will not be transmitted to the private agency.
 - B) Portions of the report may be redacted to preserve confidentiality.
 - C) The Inspector General may arrange a meeting to discuss the recommendations with the executive director, chairman or president, and the board of directors, of any private agency or child care facility that is the subject of an OIG recommendation.
 - D) The OIG report may be shared with any employee or private agency that is the subject of a recommendation and those involved in implementation of the recommendations.
 - 2) Private Agency Response
 - A) Within 45 days after receipt of the report, the private agency may submit a written response to the OIG to correct any factual errors in the report.

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- B) The Inspector General will consider all documents submitted by the private agency to determine whether a corrected report will be issued.
 - C) If the OIG determines that a corrected report is necessary, the corrected report shall be issued within 14 days after receipt of the private agency's written response.
 - D) If the OIG does not issue a corrected report, or if the corrected report does not address all issues raised within the written response from the private agency, the private agency may request that the written response, or portions of the response, be appended to the report or corrected report.
- e) OIG reports that are generated from child welfare employee licensure investigations will be submitted to the Child Welfare Employee Licensure Board and will be handled according to 89 Ill. Adm. Code 412.

Section 430.110 Annual Reports

The OIG shall provide to the General Assembly and the Governor, no later than January 1 of each year, a summary of reports and investigations made under this Part for the previous fiscal year. The summaries shall detail recommendations and the status of implementation of recommendations. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations. [20 ILCS 505/35.5(h)]

Section 430.120 Severability

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.

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