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3000 Purpose and Statutory Authority

These rules cover the following:

1. The conduct of reviews of substantiation decisions.
2. The criteria for determining risk levels for the purposes of eligibility to petition for expungement from the Child Protection Registry.
3. The conduct of reviews of expungement petitions.
4. The maintenance of records related to reviews of substantiation decisions and expungement petitions.

Nothing in these rules is intended to permit or require sharing information which is restricted or protected from such sharing by federal or state statute or regulation, or to prevent disclosure when otherwise authorized by law.

The statutory authority for these regulations can be found at 33 V.S.A. §4922.

3001 Definitions

In addition to the following definitions, please also see the definitions in Family Services Rule 2000 *Response to Child Abuse and Neglect*.

1. "Administrative Case Review Unit" means the administrative reviewers utilized by the Department to conduct administrative case review conferences and the individuals who provide administrative and technical training and other support to administrative case reviewers.
2. "Administrative Review" means reconsideration by an Administrative Reviewer of the Department's decision to substantiate allegations of child abuse or neglect.

3. "Administrative Reviewer" means a neutral and independent person utilized by the Department to conduct an Administrative Review Conference.
4. "Administrative Review Conference" means a meeting between the grievant, an administrative reviewer and, whenever possible, a Department employee for the purpose of reviewing the contents of the redacted investigation file, the positions of the grievant and the Department in order to determine whether substantiation standards have been met under law and policy. An administrative review conference may also be held to assess whether the grievant has satisfied statutory expungement standards.
5. "Child Protection Registry" is a database of all investigations that have resulted in a substantiated report of child abuse or neglect on or after, January 1, 1992 unless expunged or overturned.
6. "Expungement" means the removal of a person's name from the Child Protection Registry, following consideration of the facts related to a person's petition to expunge or in compliance with a decision to expunge by the Human Services Board or other legal authority.
7. "Grievant" means
 - a. any person who, after investigation by the Department, is determined to have abused or neglected a child and whose name has already been entered into the Child Protection Registry or who has been informed that the Department intends to place the grievant's name into the Child Protection Registry.
 - b. any person who has petitioned for expungement from the Child Protection Registry.
 - c. any person who has appealed to the Human Services Board for re-consideration of the Department's decision to place or maintain the person's name on the Child Protection Registry.
8. "Overturn" means the decision to reverse a substantiation determination by an Administrative Reviewer following an Administrative Review Conference or by the Commissioner or designee.
9. "Redacted Investigation File" means the intake report, the investigation activities summary, and case determination report that are amended in accordance with confidentiality requirements set forth in subsection 4913 of title 33.
10. "Registry Record" means an entry in the child protection registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, used in order to avoid the possibility of misidentification.

11. "Uphold" means the decision by an Administrative Reviewer following an Administrative Review Conference to affirm a substantiation determination.

3002 Establishment of the Administrative Case Review Unit

The Department shall establish an administrative case review unit within the Department and utilize the services of administrative reviewers.

3003 Persons Placed on the Child Protection Registry

The following persons' names are contained in the child protection registry:

1. All persons found to be a substantiated perpetrator of child abuse or neglect on or after January 1, 1992 and before September 1, 2007, unless that substantiation has since been overturned or expunged.
2. All persons found to be a substantiated perpetrator of child abuse or neglect after September 1, 2007 when no administrative review was requested or whose substantiation was upheld after an administrative review, unless that substantiation has since been overturned or expunged.
3. The Commissioner may place the name of a person on the Child Protection Registry pending an independent review, if the person is alleged to have sexually abused or seriously physically abused a child. The Commissioner may not delegate this authority. The Commissioner must review the investigation file and make written findings regarding:
 - i. The nature and seriousness of the alleged behavior; and
 - ii. The person's continuing access to children.
4. Individuals with a substantiation not upheld by independent review when, in exceptional circumstances, the Commissioner, in his or her sole and non-delegable discretion, reconsiders any decision made by a review and determines that the case meets the standard for substantiation. If the name of the person has been placed on the registry and the substantiation is subsequently rejected after a Human Services Board hearing, the name shall be removed.

3004 Child Protection Registry Record

A child protection registry record consists of:

1. the name and age of an individual substantiated for abuse or neglect;
2. the date of the finding;
3. the nature of the finding;
4. at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.

5. and, for individuals placed on the Child Protection Registry after July 1, 2009, a designated child protection level related to the risk of future harm to children.

3005 Overview of Child Protection Registry Levels

All individuals placed on Child Protection Registry after July 1, 2009 will have a designated child protection level related to the risk of future harm to children.

The assignment of levels shall be based on the age of the perpetrator and an evaluation of the risk the person responsible for the abuse or neglect poses to the safety of children and shall include, but are not limited to, consideration of the following factors:

1. The nature of the conduct and the extent of the child's injury, if any;
2. the person's prior history of child abuse or neglect as either a victim or perpetrator;
3. any adjudication in criminal court or family court findings;
4. the person's response to the investigation, acceptance of responsibility for the conduct, ability and willingness to engage in recommended services; and,
5. any prior termination of parental rights.

3006 Child Protection Level Assignment: 7/1/2009 – 2/28/2019

Individuals whose names were placed on the Child Protection Registry between 7/1/2009 and 2/28/2019 were assigned Child Protection Level 1 or 2. For those individuals, the adoption of this rule has no impact on their assigned Child Protection level.

3007 Child Protection Level Assignment on or after 3/1/2019

For individuals whose names are placed on the Child Protection Registry on or after 3/1/2019, individuals will be assigned a child protection registry level that reflects on an identification of risk of future harm to children. There are four different possible level designations.

A person's level designation is documented and will remain on the Child Protection Registry permanently, unless expunged. Nothing in this subsection shall give an individual the right to automatic expungement.

The following tables guide level decisions. Based on the facts and circumstances of the substantiated child maltreatment, the Deputy Commissioner, or designee, in his or her sole discretion may adjust level assignments. Level assignments are not appealable decisions.

3007.01 Level 1

| Age of Substantiated Perpetrator when Maltreatment Occurred | Type of Maltreatment |
|---|--|
| 18 or older | Serious physical injury, including with death resulting. |
| 26 or older | Sexual abuse Risk of sexual abuse by a person with a history of perpetrating sexual abuse, including, but not limited to, a history with: <ul style="list-style-type: none"> • registration as a sex offender, • sexual offense conviction, • substantiation for sexually abusing a child or vulnerable adult, or • any other sexual offending history. |

3007.02 Level 2

| Age of Substantiated Perpetrator when Maltreatment Occurred | Type of Maltreatment |
|---|--|
| 18 or older | Malicious Punishment Neglect of a child under the age of 3 |
| 18-25 | Sexual abuse Risk of sexual abuse by a person with a history of perpetrating sexual abuse, including, but not limited to, a history with: <ul style="list-style-type: none"> • registration as a sex offender, • sexual offense conviction, • substantiation for sexually abusing a child or vulnerable adult, or • any other sexual offending history. |
| Under age 18 | Serious physical injury, including with death resulting. |

3007.03 Level 3

| Age of Substantiated Perpetrator when Maltreatment Occurred | Type of Maltreatment |
|---|--|
| 18 or older with high or very high risk level at time of substantiation | Any other physical abuse that is not serious physical injury or malicious punishment. Emotional Maltreatment Risk of Harm Risk of Sexual Abuse by person without history of perpetrating sexual abuse (person responsible for child's welfare) |
| Under age 18 high or very high risk level at time of substantiation | Sexual abuse Risk of sexual abuse by a person with a history of perpetrating sexual abuse, including, but not limited to, a history with: <ul style="list-style-type: none"> • registration as a sex offender, • sexual offense conviction, • substantiation for sexually abusing a child or vulnerable adult, or • any other sexual offending history. |

3007.04 Level 4

| Age of Substantiated Perpetrator when Maltreatment Occurred | Type of Maltreatment |
|--|---|
| 18 or older with low or moderate risk level at time of substantiation | Any other physical abuse that is not serious physical injury or malicious punishment. Emotional Maltreatment Risk of Harm Risk of Sexual Abuse by person without history of perpetrating sexual abuse (person responsible for child's welfare) |
| Under age 18 with low or moderate risk level at time of substantiation | Any Abuse or Neglect that is not serious physical injury |

3008 Challenging Placement on the Child Protection Registry***3008.01 Challenging Placement on the Child Protection Registry for Substantiations before September 1, 2007***

Persons whose names were placed on the child protection registry on or after January 1, 1992 but prior to September 1, 2007 are entitled to seek an administrative review at any time, to challenge the accuracy of the substantiation decision.

3008.02 Challenging Placement on the Child Protection Registry on or After September 1, 2007

Persons whose name the Department intends to place on the child protection registry on or after September 1, 2007 are entitled to seek an administrative review before their name is placed on the registry. If the commissioner had placed the person's name on the registry before the administrative review, the administrative review shall determine if the person's name remains on the registry.

The person must notify the Department within 14 days of the date the Department mailed notice of the right to review. The Commissioner may grant an extension past the 14-day period for good cause, not to exceed 28 days after the Department has mailed notice of the right to review. This provision shall also apply to persons placed on the Registry pursuant to 33 V.S.A. 4916(a)(2).

If no administrative review is requested, the Department's decision in the case shall be final, and the grievant shall have no further right to an administrative review. The commissioner may grant a waiver and permit such a review upon good cause shown. Good cause may include an acquittal or dismissal of a criminal charge arising from the incident of abuse or neglect.

3008.03 Request to Stay an Administrative Review

The administrative review may be stayed upon request of the grievant if there is a related criminal or family court case pending in court which arose out of the same incident of abuse or neglect for which the grievant was substantiated. During the period the review is stayed, the grievant's name shall be placed on the Registry. Upon resolution of the criminal or family court case, the grievant may exercise his or her right to an administrative review by notifying the Department in writing within 30 days after the related court case, including any appeals, has been fully adjudicated. If the person fails to notify the Department within 30 days, the Department's decision shall become final and no further review under this subsection is required.

3009 Procedures for Conducting an Administrative Review of a Substantiation Decision***3009.01 Timeframes for Conduct of Review***

An administrative review conference shall be held within 35 days of receipt of the request for review.

3009.02 Department's Provision of Redacted Investigation File

At least ten days prior to the administrative review conference, the Department shall provide to the grievant a copy of the redacted investigation file and notice of time and place of the conference, and conference procedures, including information that may be submitted and mechanisms for providing information. The use of a subpoena to compel witness participation at a registry review conference is not permitted.

The Department shall also provide redacted investigation files for prior investigations relied upon by the Department to make the substantiation determination in the case for which the review conference was requested.

3009.03 Opportunity for Grievant to Provide Documents and Other Information

At least ten days prior to the administrative review conference, the Department shall provide to the grievant information about conference procedures, including how the grievant may submit documents and other information to the reviewer.

At the administrative review conference, the grievant shall be provided with the opportunity to present documents or other information that supports his or her position and provides information to the reviewer in making the most accurate decision regarding the allegation.

3009.04 Format for Administrative Review Conference

The administrative review conference will be held in person, unless the grievant requests that it be held by teleconference or other form of electronic communication.

3009.05 Timeframes for Decision of the Administrative Reviewer

Within seven days of the conference, the administrative reviewer shall:

1. Reject or overturn the Department 's substantiation determination;
2. Accept the Department 's substantiation; or,
3. Place the substantiation determination on hold and direct the Department to further investigate the case based upon recommendations of the reviewer.

Within seven days of the decision to reject or accept or to place the substantiation on hold, the administrative reviewer shall provide notice to the grievant of the decision. If the administrative reviewer accepts the Department 's substantiation, the notice shall advise the grievant of the right to appeal to the Human Services Board.

3009.06 Creation of a Registry Record Following an Administrative Review

If the administrative reviewer accepts the Department 's substantiation determination, a registry record shall be made immediately. If the reviewer rejects the Department 's substantiation determination, no registry record shall be made.

3009.07 Commissioner's Reconsideration of the Decision of an Administrative Reviewer

In exceptional circumstances, the Commissioner, in his or her sole and non-delegable discretion, may reconsider any decision made by a reviewer.

A commissioner's decision that creates a registry record may be appealed to the Human Services Board as provided in statute.

3009.08 Appeals of Substantiation Decisions to the Human Services Board

Within 30 days of the date on which the administrative reviewer mailed notice of placement on the Registry, the grievant may apply for relief, in writing, to the Human Services Board.

When the Department receives notice of the appeal, it shall make note in the registry record that the substantiation has been appealed to the Board.

If no review by the Board is requested, the Department 's decision in the case shall be final, and the grievant shall have no further right of review.

3010 Procedures for Conducting an Expungement Review

3010.01 Eligibility to Petition for Expungement from the Child Protection Registry

The following table outlines the timeline when a person whose name has been placed on the Child Protection Registry is eligible to petition for expungement:

| Date of Substantiation | Level | Years Since Substantiation |
|--------------------------------|----------------|----------------------------|
| Before 7/1/2009 | Not applicable | 3 |
| Between 7/1/2009 and 2/28/2019 | 1 | 7 |
| | 2 | 3 |
| On or after 3/1/2019 | 1 | 15 |
| | 2 | 7 |
| | 3 | 3 |
| | 4 | 1 |

3010.02 Eligibility to Petition for Expungement from the Child Protection Registry while on the Sex Offender Registry

In addition to the eligibility timeframes in rule 3010.01, a person who is required to register as a sex offender on the State's Sex Offender Registry shall not be eligible to petition for expungement of his or her Registry record until the person is no longer subject to Sex Offender Registry requirements.

A person may seek an expungement review no more than once every 36 months from the date of the last request for expungement.

3010.03 Expungement without Administrative Review Conference

For individuals who are eligible to apply for expungement, the Department may expunge the individual's name without holding an Administrative Review Conference based on available information in the record and the person's petition, as that information pertains to the expungement factors contained in statute and rule. Also, the Department may expunge without an Administrative Review Conference if the documentation contained in the record indicates that due to a change in statute, rule or policy, the person's name would not be on the registry had that policy been in place at the time of the initial substantiation decision. If the Department's review of the record results in a decision to keep the person's name on the registry, that person is entitled to a Review Hearing.

3010.04 Conducting the Review of the Petition to Expunge

A review of a petition to expunge may be conducted by the commissioner's designee or by an administrative reviewer.

The grievant shall have the burden of proving that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children.

The grievant shall be provided with the opportunity to present any evidence or other information, including witnesses that support his or her request for expungement. The use of a subpoena to compel witness participation at a registry review conference is not permitted.

3010.05 Format for Expungement Review Conference

The expungement review conference will be held in person, unless the grievant requests it be held by teleconference or other form of electronic communication.

3010.06 Factors to be considered by the Commissioner

Factors to be considered by the Commissioner during an expungement review shall include:

1. the nature of the substantiation that resulted in the grievant's name being placed on the Registry;
2. the number of substantiations;
3. the amount of time that has elapsed since the substantiation;
4. the circumstances of the substantiation that would indicate whether a similar incident would be likely to occur;
5. any activities that would reflect upon the grievant's changed behavior or circumstances, such as therapy, employment, or education;
6. references that attest to the grievant's good moral character; and
7. any other information that the Commissioner deems relevant.

The Commissioner may deny a petition for expungement based solely on the nature of the substantiation or the number of substantiations.

3010.07 Appeal of Expungement Decision to the Human Services Board

Within 30 days of the date on which the commissioner mailed notice of the expungement decision, the grievant may appeal the decision to the Human Services Board.

The grievant shall be prohibited from challenging his or her substantiation before the Board, and the sole issue for the Board's consideration shall be whether the commissioner abused his or her discretion in denial of the petition for expungement.

The Human Services Board review of an expungement decision is not a de novo review. Determinations of credibility of witnesses made by the commissioner shall be given deference by the Board.

3010.08 Automatic Expungement of Registry Records of Persons under the Age of 18

A Registry record concerning a person who was substantiated for behavior occurring before the person reached 10 years of age shall be expunged when the person reaches the age of 18, provided that the person has not acquired any subsequent registry record.

3011 Effective Date of Rule

This rule is effective March 1, 2019.