

## Regulatory Analysis

LSA Document #24-92

**I. Description of Rule:** Amendment of [465 IAC 3-2-3](#).

[465 IAC 3](#) concerns the Administrative Reviews and Administrative Appeals of the agency actions and determinations of the Department of Child Services. [465 IAC 3-2-3](#) specifically addresses the administrative review procedure for DCS employees regarding substantiation determinations in reports of child abuse and neglect.

**a. History and Background of the Rule** – During a mandated review of the qualifications of its workforce to determine compliance with federal standards and background checks, DCS noted several concerns regarding the ability of its workforce to challenge substantiations and receive due process of law. A workgroup consisting of members of both its field staff and legal department conducted a review of the situation based upon due process concerns that are otherwise available to individuals bearing a substantiation of child abuse or neglect on the Child Protection Index. Based upon its review of the administrative rules and policies thereof, DCS would therefore amend the rule to clarify and ensure that its employees are receiving an opportunity to have meaningful review of the substantiation and ensure the continued integrity of its general workforce.

[465 IAC 3-2](#) was originally promulgated and adopted in November 2012, readopted in September 2018, and is currently set to expire pursuant to [IC 4-22-2.5-2](#) in 2025.

**b. Scope of the Rule** – DCS would seek to amend existing regulations in an effort to simplify and clarify the process of administrative notice and review of substantiations.

[465 IAC 3-2-3](#) contains a citation to [IC 31-33-26-8](#), however a more precise citation to [IC 31-33-26-8\(c\)](#) would permit additional specification regarding the notice of the appealable substantiation and thereby ensure the opportunity for employees to have the review. Additionally, the rule fails to account for the after the fact discovery of substantiations, and amendment would permit the opportunity for administrative remedy in addition to the actual administrative appeal. The intention being to offer as much process as possible to match the possible realities that are not currently well addressed in the code.

**c. Statement of Need** – The amendment in rule is to address an operational issue and potential due process concerns under the federal and state constitutions. The Department of Child Services employees are required to pass federal background checks. During a routine re-certification of its workforce, questions arose about what meaningful opportunity said individuals had to challenge the substantiation. Employee substantiations that are discovered after the fact are, while appealable, unable to be subject to administrative review under the current rules. Therefore, DCS would seek to amend the rules to address those issues.

**d. Statutory Authority for the Proposed**

**i. Statutory Authority: General** - [IC 4-22-2](#), [IC 31-19-26.5-12](#) and [IC 31-33-26-13](#).

**ii. Statutory Authority: Specific** - [465 IAC 3-2-3](#); [IC 31-33-26-13](#).

**e. Fees, Fines, and Civil Penalties** – The proposed amended language does not add or increase any fees, fines, or civil penalties.

**II. Fiscal Impact Analysis**

This section should include a discussion of the impact of the proposed rulemaking on State and local government expenditures and revenues. Topics to address include (as applicable):

**a. Anticipated Effective Date of the Rule 2024**

**b. Estimated Fiscal Impact on State and Local Government** – These rule changes have no impact on local governments. The impact to the state government in fiscal terms is negligible. The effect of these rule changes removes two references to dates that are more than ten years past, and has no fiscal impact at all, and the other change is to allow department employees an opportunity for an administrative review at the point of discovery of their employment if they are found to have a substantiated case of abuse or neglect. Fiscally, this has little to no impact on the department, as the review is completed by an uninvolved department employee, and the department would be paying their wages for work either way. The only impact comes in potentially minor delays in the work of the reviewing employee, which are impossible to quantify.

**c. Sources of Expenditures or Revenues Affected by the Rule** – Any impact to the department's expenditures would likely be a mixture of state general fund and federal grant funding, as most employee salaries are paid through a federally approved mix of state and federal funding.

**III. Impacted Parties**

There are three categories of potentially impacted parties: 1) Child care or licensed foster parents who have

been accused of a substantiated report of abuse or neglect, 2) department employees who have been accused of a substantiated report of abuse or neglect, 3) members of the public who have been accused of a substantiated report of abuse or neglect. The defining factor in all of these categories is the fact that they have been accused of a substantiated report of abuse or neglect.

The impact upon the first and third groups is likely to be negligible, as the targeted amendment is largely impacting employees of the department. This impact to department employees has a potential to be more significant but not overwhelming. Should an employee be named as the perpetrator in a case of substantiated abuse or neglect but not be identified as an employee until a later date, the employee would be able to request an administrative review at that time. Under the rule as it is currently written, even if the employee were to be identified as an employee at a later date, they would not be able to obtain the benefit of the administrative review as it relates to their employment if they were identified as an employee after the fifteen-day limitation period. Thus, the rule change grants additional protections to department employees who have been named as perpetrators in cases of substantiated abuse or neglect.

#### IV. Changes in Proposed Rule

There is one changes from existing regulation in the Administrative Code proposed: the inclusion of language that permits administrative review of a substantiation to begin after identification of the substantiated individual as an employee of the department.

#### V. Benefit Analysis

The benefits of the rule changes range from minor to significant. The benefit of adding language that permits administrative review of a substantiation to begin after identification of the substantiated individual as an employee of the department has the potential to be a significant benefit to department employees in that position. It will allow them to advocate for their situation, should they so choose, and possibly afford them the opportunity to maintain their position, should the administrative review be successful. As this impacts their livelihood, it is important that the ability to have this review be delineated in rule for this population.

**a. Estimate of Primary and Direct Benefits of the Rule** – Direct benefits of the rule changes is that department employees who find themselves named as perpetrators in a substantiated case of abuse or neglect being able to obtain an administrative review, even if they are identified as employees at a later date. This allows them to advocate for their livelihood and possibly obtain a reversal of the substantiation if appropriate.

**b. Estimate of Secondary or Indirect Benefits of the Rule**

There are no identified secondary or indirect benefits of these rule changes.

**c. Estimate of Any Cost Savings to Regulated Industries**

There are no identified cost savings to regulated industries.

#### VI. Cost Analysis

There are no costs outside of traditional costs of operations related to these rule changes. The department would be paying the cost of employee salary related to the independent reviewer for a department employee. Therefore, there are no identified additional costs related to these rule changes.

**a. Estimate of Compliance Costs for Regulated Entities** – No costs have been identified in relation to regulated entities.

**b. Estimate of Administrative Expenses Imposed by the Rules** – There is no cost to file an administrative review, therefore there is no additional expense imposed by these rule changes.

**c. The fees, fines, and civil penalties analysis required by [IC 4-22-2-19.6](#)** – No fines, fees, or civil penalties are being added by the rule change.

#### VII. Sources of Information

The sources of information relied upon in this analysis were personal knowledge of department employees. No database or outside information was utilized due to the exceptionally minor costs associated with the rule changes.

**a. Independent Verifications or Studies** – No studies or independent verifications were used in this analysis.

**b. Sources Relied Upon in Determining and Calculating Costs and Benefits** – No outside sources were relied upon in determining the costs or benefits of these changes. The knowledge of multiple department employees was utilized to determine the fiscal impact and the estimated benefits to department employees.

#### VIII. Regulatory Analysis

The change related to allowing an administrative review for an employee who has been named as the

perpetrator of a substantiated case of abuse or neglect but was not identified as an employee until later also has minimal costs associated with it, indeed it has no identified costs outside of normal operational expenses. However, the benefits to the impacted parties of this rule change are significant, in that it will give them the opportunity to argue their case before an independent reviewer. As the review will make a significant impact on their ability to retain employment with the department, it is important that the ability to have the review be enumerated in rule.

*Notice of First Public Comment Period with Proposed Rule:* [20240320-IR-465240092FNA](#)

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