

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY</b>	
	<b>Chapter 2:</b> Administration of Child Welfare	<b>Effective Date:</b> April 1, 2013
	<b>Section 5:</b> Administrative Appeal Hearings	<b>Version:</b> 4

<b>STATEMENTS OF PURPOSE</b>
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The Indiana Department of Child Services (DCS) recognizes the right of the perpetrator to request an Administrative Appeal Hearing if substantiated allegations of Child Abuse and/or Neglect (CA/N) are upheld in the DCS Administrative Review. The process outlined herein will apply to all substantiated CA/N determinations made on or after October 15, 2006.

If the substantiated assessment is against a minor perpetrator, the request for an Administrative Appeal Hearing must be made by the child's parent, guardian, attorney, Guardian ad Litem (GAL), or Court Appointed Special Advocate (CASA).

DCS requires that all requests for Administrative Appeal Hearing by a perpetrator utilize the [Request for an Administrative Appeal Hearing for Child Abuse or Neglect Substantiation \(SF 54776\)](#) and that the request be received by DCS Hearings and Appeals within **30 calendar days** (if request hand delivered) or **33 calendar days** (if request mailed) from the date identified on the [Notice of Right to Administrative Appeal of a Child Abuse or Neglect Determination \(SF 55148\)](#).

**Note:** If the request for an Administrative Appeal is received on a day that the DCS Hearings and Appeals is closed, the next business day is considered the receipt date. If the request deadline is on a day that the DCS local office is closed, the deadline is extended to the next business day.

If the substantiated assessment is against a DCS Employee or a Child Care Worker (CCW) as defined in DCS policies [2.3 Child Care Worker Assessment Review Process](#) and [2.4 Assessment and Review of DCS Staff Alleged Perpetrators](#), the Administrative Appeal Hearing will be held within **20 calendar days** of the date the request is received by Hearings and Appeals, unless the perpetrator (appellant) waives the time limit in writing as outlined in [465 IAC 3-3-9](#).

**Note:** If the perpetrator is a DCS employee or a child care worker, DCS cannot ask for a continuance. See [465 IAC 3-3-18](#).

DCS will hold all other hearings within **90 calendar days** from the date the request is received by Hearings and Appeals unless the appeal is stayed or continued pursuant to applicable law or rule.

A person who is denied administrative review may file a request to reconsider the denial. If upon reconsideration, the denial is upheld, the person may administratively appeal that decision. Any administrative appeal will be limited to the denial itself, as a procedural issue, and will not include the merits of the underlying substantiation. If the denial is upheld, the ALJ decision will be the final DCS decision. If the denial is reversed, the case will be remanded to DCS so that an administrative review can be conducted.

The DCS Hearings and Appeals unit will notify the appellant and the DCS local office in writing of the hearing date, via mail or email, at least **10 calendar days** in advance.

**Note:** An appellant is the person identified as a substantiated perpetrator of child abuse and/or neglect who has completed an administrative review by DCS and has submitted a complete request for an administrative appeal hearing.

DCS acknowledges that the appellant has the right to bring witnesses and/or legal counsel to the hearing to present relevant evidence and cross examine DCS's witnesses.

**Note:** For those administrative appeals that were stayed before the effective date of this policy, the administrative appeal process must be reactivated in accordance with the stay letter or order of Stay provided to the appellant.

DCS will not conduct an Administrative Appeal Hearing and will order a Stay of the Administrative Appeal process if a motion is filed by either the appellant or the DCS local office and documentation is filed with Hearings and Appeals to show that one of the following applies:

1. A Child in Need of Services (CHINS) petition has been filed based on the facts of the substantiated assessment, until the court has ruled on the petition:
  - a. Any request received for an Administrative Appeal will be stayed due to a pending CHINS matter by submitting the Preliminary Inquiry and CHINS Petition and/or other appropriate supporting documentation, and
  - b. During the Stay, the substantiation will remain on the Child Protection Index (CPI).
2. Criminal charges or a Juvenile Delinquency Petition (JD) have been filed based on the same facts and circumstances that the report of CA/N was substantiated, until the case is resolved:
  - a. Any request received for an Administrative Appeal will be stayed due to a pending criminal or JD matter by submitting a Probable Cause Affidavit, charging information and/or other supporting documentation, and
  - b. During the Stay, the substantiation will remain on the CPI.
3. An Informal Adjustment (IA) has been filed and is pending. A copy of the filed IA will suffice as supporting documentation. During the Stay, the substantiation will remain on the CPI.
4. DCS has received notification from the County Prosecutor's Office that criminal charges are under review based on the same facts and circumstances which resulted in the classification of allegations as substantiated against the perpetrator who has requested an Appeal Hearing.

**Note:** The DCS local office or appellant must notify Hearings and Appeals by notice or motion to request that the Administrative Appeal process be stayed.

When appropriate, either the DCS local office or appellant may request that the administrative appeal process be reactivated or dismissed, in accordance with the order of stay of the Administrative Law Judge (ALJ).

**Note:** The Stayed case will remain open on the Hearings and Appeals docket until it is concluded by a final ALJ decision.

The DCS Administrative Appeal Hearing will be conducted and decisions issued in accordance with the procedures outlined in [465 IAC 3-3](#).

The presiding ALJ will issue a written decision:

1. Within 15 calendar days after completion of the hearing or closure of the hearing record for child care workers and DCS Employees; or
2. Within 30 calendar days after completion of the hearing or closure of the hearing record for all other perpetrators.

The ALJ's decision will be the **final** decision of DCS regarding the classification of the Child Protective Services (CPS) assessment and report, subject to the right to judicial review as provided in [IC 4-21.5-5](#).

**Note:** This policy does not apply to any Administrative Appeal other than the substantiation of allegations of CA/N by DCS.

Code References

1. [IC 31-33-26: Child Protection Index](#)
2. [IC 4-21.5-5 Judicial Review](#)
3. [465 IAC 3: Administrative Reviews and Hearings](#)

## PROCEDURE

The perpetrator will request an Administrative Appeal Hearing by submitting a copy of the following documents to DCS Hearings and Appeals, within **30 calendar days** of the date on the [Notice of Right to Administrative Appeal for a Child Abuse or Neglect Determination \(SF 55148\)](#):

1. The [Notice of Right to Administrative Appeal for a Child Abuse or Neglect Determination \(SF 55148\)](#);
2. The [Assessment of Alleged Child Abuse and Neglect \(SF 113\) \(311\)](#); and
3. A [Request for an Administrative Appeal Hearing for Child Abuse or Neglect Substantiation \(SF 54776\)](#).

An additional **three (3) days** will be allowed for mail time.

**Note:** If the request is received on a Saturday, Sunday, or legal holiday under state statute the next business day is to be considered the receipt date.

When a request for a hearing is received DCS Hearings and Appeals will:

1. Record the case in the DCS hearing tracking system;
2. Assign the case to a DCS Administrative Law Judge (ALJ);
3. Schedule a hearing; and
4. Notify the perpetrator (appellant), the appellant's representative (if applicable), the ALJ, the DCS Local Office Director (LOD), and the DCS Staff Attorney of the date, time and specific location of the hearing.

**Note:** If concerns for the security of any witness or employee comes to the attention of a DCS employee, the employee is to notify the Hearings and Appeals, and DCS LOD where the hearing is being conducted.

At the hearing, the DCS local office representative will:

1. Review assessment documentation prior to the hearing; and

2. Bring supporting documentation to be entered as evidence and witnesses to the hearing. Exhibits should be appropriately redacted to eliminate all Social Security numbers, identification of the report source, and any other information necessary for redaction.

The ALJ will:

1. Conduct a hearing in accordance with the procedures specified in [465 IAC 3-3](#); and
2. Issue a written decision:
  - a. Within 15 calendar days after completion of the hearing or closure of the hearing record for child care workers, and DCS employees, or
  - b. Within 30 calendar days after completion of the hearing or closure of the hearing record for all other hearings of substantiated assessments of CA/N.

After the hearing, the DCS Hearings and Appeals Coordinator will ensure that all of the following persons are notified of the decision:

1. The appellant (perpetrator);
2. The appellant's (perpetrator's) representative or legal counsel, if applicable;
3. The DCS LOD of the county who assessed the case;
4. The RM; and
5. DCS Staff Attorney.

**Note:** All distribution of notices and orders to the DCS LOD, DCS Staff Attorney, and RM will be emailed in PDF format. Assessments completed by the Institutional Child Protective Services (ICPS) Unit will also be notified of the ALJ decision.

The RM, DCS LOD or the Program Manager for the Institutional Child Protective Services (ICPS) Unit will ensure that DCS complies with the decision issued by the ALJ, including any remand.

## **PRACTICE GUIDANCE**

### **Hand Delivery**

Hand delivery requires successful face-to-face contact with the alleged perpetrator and a documented contact in the case management .

### **Preparation for a Scheduled Administrative Appeal Hearing**

The DCS local office should prepare exhibits and witnesses for an Administrative Appeal Hearing in the same manner as if it were preparing for a CHINS Juvenile Court Fact Finding Hearing. Thorough records and documentation should be compiled and presented at the Administrative Appeal Hearing as DCS local office exhibits. DCS must prove by a preponderance of credible evidence that child abuse and/or neglect occurred and that the appellant is responsible for the child's abuse and/or neglect.

### **Presenting the DCS Case at the Hearing**

At the Administrative Appeal Hearing, the DCS case may be presented by a Family Case Manager (FCM), FCM Supervisor, Program Manager for the Institutional Assessment Unit and/or DCS Staff Attorney. The DCS LOD may decide who is best able to represent the Agency. The appellant may present his or her case personally or through counsel or other representative. Each party has the right to bring witnesses to the hearing, present relevant evidence and cross examine the other parties' witnesses.

### **Provide copies of interviews or video recordings at the Hearing**

The use of audio or video recordings, including forensic interviews, can be helpful in proving a DCS case. If submitted as an exhibit, it must be in a format that can be played at the hearing (laptop computer, recorder, etc.).

**Note:** All exhibits must be provided to the ALJ with a copy to the opposing party.

### **Final Decision of DCS**

The ALJ's decision will be the final decision of DCS regarding the classification of the CPS assessment and report, subject to judicial review as provided in [IC 4-21.5-5](#).

### **FORMS AND TOOLS**

1. [Request for an Administrative Appeal Hearing for Child Abuse or Neglect Substantiation \(SF 54776\)](#) – Available in case management system
2. [Notice of Right to Administrative Appeal for a Child Abuse or Neglect Determination \(SF 55148\)](#) – Available in the case management system
3. [Assessment of Child Abuse or Neglect \(SF 113\) \(311\)](#) – Available in the case management system

### **RELATED INFORMATION**

#### **Location of Hearings**

All hearings for child care workers and DCS employees will be held in Indianapolis, unless the perpetrator/appellant, in writing, both:

1. Requests that the hearing be held in another location; and
2. Requests an extension of the hearing time limits and waives an expedited hearing.

All other hearings will be held in a pre-determined centralized location near the county of residence of the appellant. The ALJ may order a hearing site other than those identified in the event of natural disaster or other reason as determined by the ALJ. The locations are as follows:

Appellant resides in:	Hearing will be held in:
Region 1, Region 2	Gary, Indiana
Region 3, 4, 6 (Miami, Fulton and Wabash County), 7 (Blackford, Grant, Jay and Randolph County)	Fort Wayne, Indiana
Regions 5, 6 (Cass and Howard County), 7 (Delaware County), 8, 9, 10, 11, 12, 14 (Johnson County and Shelby County)	Indianapolis, Indiana
Regions 13, 14 (Bartholomew, Jackson, Jennings County), 15, 18 (Clark, Floyd, and Scott County)	Seymour, Indiana
Regions 16, 17, 18 (Harrison, and Washington County)	Jasper, Indiana

**Note:** Hearings may also be conducted via telephone or video conference if approved by the ALJ.