

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 2: Administration of Child Welfare	Effective Date: July 1, 2020
	Section 5: Administrative Appeal Hearings	Version: 5

STATEMENTS OF PURPOSE

The Indiana Department of Child Services (DCS) recognizes the right of the alleged perpetrator to request:

1. An Administrative Appeal Hearing if substantiated allegations of Child Abuse and/or Neglect (CA/N) are upheld in the DCS Administrative Review; or
2. An Administrative Appeal of Denial of Administrative Review if Administrative Review is denied.

The process outlined herein will apply to all substantiated CA/N determinations and denials of an Administrative Review made on or after October 15, 2006, the date in which DCS became Child Abuse Prevention and Treatment Act (CAPTA) compliant.

A request for an Administrative Appeal Hearing or a request for an Administrative Appeal of Denial of Administrative Review may be submitted by an alleged perpetrator to the DCS Hearings and Appeals. DCS will forward any timely and complete request for an Administrative Appeal Hearing to the Office of Administrative Law Proceedings (OALP) and request the appointment of an Administrative Law Judge (ALJ) to conduct the hearing.

Note: 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).

Administrative Appeal Hearings and Administrative Appeal of the Denial of Administrative Reviews are conducted by the Office of Administrative Law Proceedings (OALP) in accordance with [IC 4-15-10.5](#), [IC 31-33-26](#), [465 IAC 3-2-7](#), and [465 IAC 3-3](#), pursuant to [IC 4-15-10.5](#).

If the substantiated assessment is against a DCS Employee or a Child Care Worker 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 DCS Hearing and Appeals, unless the alleged perpetrator waives the time limit in writing as outlined in [465 IAC 3-3-9](#). All other hearings will be held within 90 calendar days from the date the request is received by DCS Hearing and Appeals, unless the appeal is stayed or continued pursuant to applicable rule or law.

The DCS local office or [appellant](#) must notify Hearings and Appeals by notice or motion to request that the Administrative Appeal process be stayed. An Administrative Appeal Hearing will not occur during the period of the stay. Documentation must be 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 (JD) Petition 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; or
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.

If the Administrative Appeal has been stayed, when appropriate, either the DCS local office or [appellant](#) may request the administrative appeal process be reactivated or dismissed, in accordance with the order of stay of the ALJ. The stayed case will remain open on the OALP docket until it is concluded by a final ALJ decision.

Upon issuance of the written decision by the ALJ, the DCS Office of General Counsel (OGC) will automatically conduct Final Agency Review of decision and notify all parties of the review results.

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](#)
4. [IC 4-15-10.5: Office of Administrative Law Proceedings](#)

PROCEDURE

Requesting an Administrative Appeal Hearing

To request an Administrative Appeal Hearing, the alleged perpetrator will submit 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. [Notice of Right to Administrative Appeal for a Child Abuse or Neglect Determination \(SF 55148\)](#);
2. [Assessment of Alleged Child Abuse and Neglect \(SF 113\)](#); and
3. [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.

Once Request is Received

When a request for an Administrative Appeal Hearing is received by DCS Hearings and Appeals, DCS Hearings and Appeals will:

1. Determine if the request is timely and complete; and

Note: If the request is not timely and complete, DCS Hearings and Appeals will notify the alleged perpetrator of the defect in their request and allow additional time to perfect his or her request.

2. Forward complete and timely requests for Administrative Appeal Hearings to OALP and request that OALP appoint an ALJ to conduct an Administrative Appeal Hearing.

Note: If concerns for the security of any witness, employee, or the ALJ comes to the attention of a DCS employee, the employee will notify the OALP and the DCS Local Office Director (LOD) of the county where the hearing is being conducted (if the hearing is being conducted in a DCS local office).

Preparation for the Administrative Appeal 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.

Note: Exhibits should be appropriately redacted to eliminate all Social Security numbers, identification of the report source, and any other information necessary for redaction.

Presenting the DCS Case at the Administrative Appeal Hearing

1. A DCS Attorney will present the DCS case at the Administrative Appeal Hearing; and
2. Others (e.g., Family Case Manager [FCM], FCM Supervisor, and/or Program Manager for the Institutional Assessment Unit) may be called as witnesses or as a DCS client representative.

After the Administrative Appeal Hearing

1. The ALJ will issue his or her decision: upholding or reversing DCS, or remanding the matter to DCS.
2. The OALP Coordinator will ensure all of the following persons are notified of the decision:
 - a. The [appellant](#);
 - b. The [appellant's](#) representative or legal counsel, if applicable;
 - c. The DCS LOD of the county who assessed the case;
 - d. The DCS Final Agency Authority; and
 - e. DCS Attorney of record.

Final Agency Review

1. Upon issuance of the written decision by the ALJ, the DCS OGC will automatically conduct Final Agency Review of decision; and

Note: The DCS Final Agency Authority may schedule status conferences or briefing deadlines during his or her review, however, failure to attend these status conferences or

respond to briefing deadlines will not result in a dismissal of the case or a failure of the Final Agency Authority to issue a decision on the case.

2. Upon completion of the Final Agency Review, the DCS OGC will notify all parties of the results of the review.

Note: The DCS OGC may uphold, reverse, remand, or modify the ALJ's decision. If the [appellant](#) is dissatisfied with the results, he or she may seek judicial review as provided in [IC 4-21.5-5](#).

Administrative Appeal of the Denial of Administrative Review

1. An Administrative Appeal of the Denial of Administrative Review will be heard by an ALJ and will be limited to the denial itself.

Note: The Administrative Appeal Hearing will not include the merits of the underlying substantiation.

2. The ALJ may uphold or reverse the denial. The ALJ's decision will become a final decision after fifteen (15) days, unless either party requests Final Agency Review by the DCS OGC.
3. If a party requests Final Agency Review within fifteen (15) days of the date the ALJ issues his or her decision, the DCS OGC will conduct the review and will notify the [appellant](#) of the result:
 - a. If the denial is upheld, the [appellant](#) may request judicial review of that decision in accordance with [IC 4-21.5-5](#), or
 - b. If the denial is reversed, the case will be remanded to DCS to complete administrative review.

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 \(SF 113\)](#) – Available in the case management system

PRACTICE GUIDANCE

Hand Delivery

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

Presenting the DCS Case at the Administrative Hearing

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.

Preparation for a Scheduled Administrative Appeal Hearing

DCS must prove by a preponderance of credible evidence that CA/N occurred and that the [appellant](#) is responsible for the child's abuse and/or neglect. 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 for presentation at the Administrative Appeal Hearing as DCS local office exhibits. All exhibits must be provided to the ALJ.

Note: 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.).

RELATED INFORMATION

Location of Hearings

All hearings will be held in a pre-determined centralized location near the county of residence of the [appellant](#), or in Indianapolis, Indiana. 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.

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

Appellant

An appellant is the person identified as a substantiated perpetrator of CA/N who has completed an administrative review by DCS and has submitted a complete request for an Administrative Appeal Hearing.