



## Notice of Processes for Department of Child Services Proceedings: Substantiation of Child Abuse and/or Neglect

**Effective:** July 1, 2020

**Director:** Matthew A. Brown, \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Matt Brown", is written over a horizontal line.

### **Purpose and Scope**

This notice outlines the processes and practices of the Department of Child Services (DCS) and the Office of Administrative Law Proceedings (OALP) pertaining to proceedings involving the substantiation of Child Abuse and/or Neglect.

### **Processes and Practices**

OALP recognizes the right of the individual substantiated on by DCS to request an Administrative Appeal Hearing if substantiated allegations of Child Abuse and/or Neglect (CA/N) are upheld in a DCS Administrative Review (see [DCS Policy Chapter 2 Administration of Child Welfare](#)). The process outlined herein will apply to all substantiated CA/N determinations made on or after October 15, 2006, the date upon which DCS became compliant with the Child Abuse Prevention and Treatment Act.

An individual substantiated on by DCS may request an Administrative Appeal Hearing by submitting a timely and complete request for Administrative Appeal Hearing to the DCS Hearings and Appeals. When a completed request is received timely by DCS Hearings and Appeals, DCS will forward the request to OALP and request the appointment of an Administrative Law Judge (ALJ) to conduct an Administrative Appeal Hearing.

Administrative Appeal Hearings are conducted by OALP in accordance with [IC 4-15-10.5](#), [IC 31-33-26](#), and [465 IAC 3-3](#), pursuant to [IC 4-15-10.5](#).

After conducting the Administrative Appeal Hearing, the ALJ will issue his or her decision, upholding or reversing DCS, or remanding the matter to DCS. Upon the issuance of the decision, DCS will automatically conduct a Final Agency Review of the ALJ's decision and notify parties of the result, including any right to judicial review.

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

Unless the individual substantiated on by DCS waives the time limit in writing, as outlined in [465 IAC 3-3-9](#), the Administrative Appeal Hearing will be held within **20 calendar days** of the date the request is received by the OALP 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](#).

**Note:** If the individual substantiated on by DCS is a DCS employee or CCW, a continuance should not be requested. See [465 IAC 3-3-18](#) for additional information.

OALP will schedule all other hearings within 120 calendar days from the date the request is received by OALP unless the appeal is stayed or continued pursuant to applicable law or rule.

A person who is denied administrative review may file a request with DCS to reconsider the denial. Upon reconsideration, if the denial is upheld, the person may administratively appeal that decision by requesting an Administrative Appeal of the Denial of Administrative Review from DCS Hearings and Appeals. Any administrative appeal of this type will be heard by an ALJ and will be limited to the denial itself. As a procedural issue, the Administrative Appeal Hearing will not include the merits of the underlying substantiation.

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 Office of General Counsel (OGC). If a party requests a Final Agency Review within 15 days of the date the ALJ issues his or her decision, the DCS OGC will conduct said review and will notify the appellant of the result of the review. If the denial is upheld, the appellant may request judicial review of that decision in accordance with [IC 4-21.5-5](#). If the denial is reversed, the case will be remanded to DCS to complete the administrative review.

OALP 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 of any hearing or status conference.

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

OALP will not conduct an Administrative Appeal Hearing and will instead order a stay of the Administrative Appeal process if a motion is filed by either the appellant or DCS and documentation is filed with OALP to show that one (1) of the following applies:



1. A Child in Need of Services (CHINS) petition has been filed based on the same facts of the substantiated assessment:
  - a. The request for an Administrative Appeal Hearing will be stayed by submitting the Preliminary Inquiry and CHINS Petition and/or other appropriate supporting documentation. The appeal will be stayed until the court has ruled on the petition and issued its dispositional order, and
  - b. The substantiation will remain on the Child Protection Index (CPI) during the stay.
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 Hearing will be stayed by submitting a Probable Cause Affidavit, charging information, and/or other supporting documentation, and
  - b. The substantiation will remain on the CPI during the stay.
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 or the appellant 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 individual substantiated on by DCS who has requested an Administrative Appeal Hearing.

**Note:** The DCS local office or appellant must notify OALP 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 ALJ.

**Note:** The stayed case will remain open on the OALP docket until it is concluded by a final ALJ decision and DCS final agency review.

The 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 CCWs and DCS Employees; or



2. Within 30 calendar days after completion of the hearing or closure of the hearing record for all other individuals substantiated on by DCS.

Upon issuance of the ALJ's written decision, the DCS OGC will automatically conduct a final agency review of said decision. Upon completion of the Final Agency Review, the DCS OGC will notify all parties of the results. If the appellant is dissatisfied with the results, he or she may seek 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.

### **Summary of Processes**

When OALP receives a request for an Administrative Appeal Hearing from DCS Hearings and Appeals, OALP will:

1. Open a file for the case;
2. Assign the case to an ALJ;
3. Schedule a hearing; and
4. Notify the 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, employee, or the ALJ comes to the attention of a DCS employee, the employee is to notify the OALP and the DCS LOD of the location where the hearing is being conducted (if the hearing is being conducted in a DCS local office).

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 CCWs 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 OALP Coordinator will ensure all of the following individuals are notified of the decision:

1. The appellant;
2. The appellant's representative or legal counsel, if applicable;
3. The DCS LOD of the county who assessed the case;
4. The DCS Final Agency Authority; and
5. DCS Attorney of record.



Upon issuance of the written decision by the ALJ, the DCS OGC will automatically conduct Final Agency Review of said decision. Upon completion of the Final Agency Review, the DCS OGC will notify all parties of the results of the review. 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](#).

### **Location of Hearings**

All hearings will be held in a pre-determined centralized location either near the county of residence of the appellant or in Indianapolis. 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.

### **Definition of Appellant**

An appellant is the person identified as an individual substantiated on by DCS of CA/N. The appellant has completed an administrative review or was denied an administrative review by DCS, and has submitted a complete request for an Administrative Appeal Hearing.

### **Code References**

1. [IC 31-33-26: Child Protection Index](#)
2. [IC 4-21.5-5 Judicial Review](#)
3. [IC 31-27-4-23: Administrative hearings](#)
4. [IC 31-27-4-24: Procedure for administrative hearings](#)
5. [465 IAC 2-15.1-16 Administrative review](#)
6. [465 IAC 3: Administrative Reviews and Hearings](#)
7. [465 IAC 3-3-3\(g\) Request for hearing](#)
8. [IC 4-15-10.5: Office of Administrative Law Proceedings](#)