

DUE PROCESS

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I. INTRODUCTION

The federal Child Abuse and Prevention Act (CAPTA) provides that all persons allegedly responsible for abuse/neglect with substantiated (i.e., indicated) CA/N dispositions be given the opportunity to disagree with the Department's finding.

Alabama state law (Code of Alabama 1975 § 26-14-7.1) provides additional due process rights to those individuals employed by licensed and license- exempt child care providers. Due process under this statute is applicable only to those individuals currently employed or persons currently connected with any facility, agency or home at the time the report was received.

Before entering the "indicated" disposition into the CA/N Central Registry, child welfare staff shall provide these individuals with the opportunity to appeal DHR's finding through a CA/N hearing or an administrative record review.

Due process rights are not applicable to:

- situations where DHR conducts an assessment, evaluation, or home study and submits a report pursuant to a court order or request (e.g., home evaluations on persons involved in custody cases); and
- situations involving military personnel or incidents occurring on Indian reservations when DHR does not conduct the CA/N assessment. Procedures for disclosing CA/N information is governed by regulations and working agreements with military or tribal authorities.

II. CA/N HEARINGS

Child welfare staff shall offer a CA/N hearing to the following individuals when they have been identified as the person allegedly responsible for abuse/neglect and the preliminary CA/N disposition is "indicated."

- Any person who is approved, licensed, or certified to care for children; or
- Any person who is currently employed (i.e., professional, non-professional, contract) by, serves as a volunteer for, or is connected with (e.g., students completing an educational practicum, board members) any facility, agency, or home which cares for and controls any children

AND

the facility is licensed, approved, or certified by the state; operated as a state facility; or is any public, private, or religious facility or agency that may be exempt from licensing procedures.

Note: A hearing must be offered to these individuals even when the person was reported to have abused/neglected their own children. "Connected with" does not mean a family relationship, but rather an individual being employed or licensed in some capacity with any facility, agency, or home which cares for and controls any children.

Exceptions:

CA/N hearings are not provided to the following who do not meet all the criteria above for being offered a CA/N hearing:

- day care providers' family members who have not been clearly identified as the day care home's substitute care provider, or
- foster parents' family members

A. Notification Process for Administrative Hearings

Before entering the "indicated" disposition into the Central Registry at the completion of the CA/N assessment, child welfare staff shall provide persons allegedly responsible for abuse/neglect with written notification of their right to a CA/N Hearing. Each person identified as responsible for abuse/neglect must be sent a separate letter. If the person is a minor (i.e., under age 19), the notification must be sent in care of the minor's parents, and the parents may request a hearing on behalf of their child.

The following procedure is used in notifying each person identified as responsible for abuse/neglect and who qualifies for an administrative hearing.

- The notification may be mailed or hand-delivered. If mailed, send the notice in the form of a certified letter, restricted delivery, return receipt requested and by first-class mail with "Personal and Confidential" marked on the outside of the envelope. The letter must be mailed the same day as the date on the letter. If hand-delivered, child welfare staff shall document the delivery date in FACTS. Retain a copy of the notification letter in the CA/N record.
- The person allegedly responsible for abuse/neglect has ten (10) working days from receipt of the notification letter to provide the County Department with a written request for a hearing. If the person fails to provide the written request to the County DHR office within the designated timeframe, the opportunity for a hearing is considered to be waived. Child welfare staff shall then enter the "indicated" disposition into the Central Registry and provide notification of the CA/N assessment findings to employers, prospective employers, facility administrators, and/or approving/licensing/certifying agencies or groups as appropriate.

When a written hearing request is received, child welfare staff shall send the original request and a copy of the notification letter to the Office of Administrative Hearings, State Department of Human Resources. Maintain a copy of the written request in the CA/N record and enter the receipt date into the Central Registry.

Note: If the person allegedly responsible for abuse/neglect holds a DHR approval/license to provide child care, the CA/N hearing may need to be held in conjunction with a licensing hearing. The Office of Administrative Hearings will coordinate any joint hearings with the Child Care Partnership or the Office of Licensing And Resource Development.

B. Content of Notification Letters for Administrative Hearings

Notification letters to persons allegedly responsible for abuse/neglect shall contain, at a minimum, the following:

The Department of Human Resources has completed its CA/N assessment of the *abuse/neglect* allegations where you were identified as being responsible for the abuse/neglect, and we have reasonable cause to believe the allegations are “indicated” (i.e., true). The assessment revealed that on or about *{enter the date}* at *{enter the location when known}* you *{provide a brief, but **specific** description of the incident (e.g., left 4 year old ‘child’s name’ at home by herself from approximately 8:00 a.m. to 11:00 a.m.)}* – *it is not appropriate to list **only** the allegation.*

The Department may share the findings with your employer or licensing/certifying agency and may choose to share this information with future or prospective employers or licensing/certifying agencies for the protection of children. Our findings will also be entered into the Department’s Child Abuse and Neglect Central Registry as required by state law (Code of Alabama 1975 § 26-14-8).

Before making a final determination on the abuse/neglect allegations, we are offering you the opportunity to request a hearing to contest our findings. The hearing is investigative in nature and is designed to obtain facts in an atmosphere that allows you to respond to the allegations made against you. At the hearing, the Department will bear the burden of proving the allegations against you, and will present witnesses and evidence in support of the allegations. If you wish, you may be represented by a lawyer or other person at the hearing, cross-examine witnesses, present additional information, testify, and present your own witnesses.

If you want to request a hearing to contest our findings, you must notify us within ten (10) working days of the date you received this letter. You must submit your request in writing to the County Department at the address shown at the top of this letter. The County Department must receive your written request by the 10th day. If we do not hear from you within this time, your opportunity for a hearing will be considered waived. We may then advise your employer or licensing/certifying agency of our findings and may notify future or prospective employers or licensing/certifying agencies of our findings as necessary for the protection of children and other vulnerable persons.

C. Notification Of CA/N Hearings

A CA/N hearing officer will schedule the hearing and provide notification of the hearing date to the person allegedly responsible for abuse/neglect. A copy of the notification letter will be sent to the County Department.

The hearing officer's notification letter will inform persons allegedly responsible for abuse/neglect of their rights which include:

- The right to present their own case or to be represented by legal counsel or by any other person.
- The right to present written evidence, oral testimony, and witnesses.
- The right to be provided (by the County Department) a brief written statement of the information that will be presented at the hearing, and that they must request the statement prior to the hearing date. **Note:** If the hearing officer requests additional information from the County Department, that information must be returned to the hearing officer within the timeframe specified by the officer or within five (5) working days of the request. Any written statement provided by the County Department must not contain the reporter's name unless that person will be a witness for DHR, or unless DHR is later directed by the hearing officer to release the reporter's name.
- The right to review and copy (at a cost) any written or recorded statement made by the person allegedly responsible for abuse/neglect to DHR personnel during the course of the CA/N assessment. The person allegedly responsible for abuse/neglect must request this information before the hearing date.
- The right to review and copy (at a cost), before or during the hearing, the written material and other evidence in DHR's possession that will be placed into evidence at the hearing.
- The right to request an in camera (i.e., private) inspection of the CA/N record by the hearing officer (not the person allegedly responsible for abuse/neglect) or to request that an order be issued to DHR for the hearing officer to review relevant DHR records to determine if there is any exculpatory evidence (i.e., evidence tending to clear or exonerate) in the records that is not available to the person allegedly responsible for abuse/neglect through other sources and which must be released as necessary to the constitutional fairness of the hearing. The request must be made at least five (5) working days before the hearing date.
- The right to review and copy (at a cost) all non-confidential DHR documents (e.g., policy material).
- The right to cross-examine witnesses testifying against them at the hearing.

- The right to request that subpoenas be issued to witnesses. This request must be received no later than ten (10) days before the hearing unless the hearing officer agrees to a shorter timeframe.
- The right to review and copy (at a cost) all documents in the official hearing file maintained by the hearing officer.

D. Intra-Agency Review Of Cases Scheduled for CAN Hearings

As a part of the Department's due process for CAN hearings, designated SDHR Administrative Record Review Staff and county reviewers will conduct a preliminary review of the CA/N record. The purpose of the preliminary review of the record is to determine whether there is sufficient documentation in the record to support the continuation of the hearing process and whether the person allegedly responsible for abuse or neglect (PARAN) is entitled to a hearing in accordance with the Code of Alabama. An administrative assignment (not a primary assignment) must be manually created in FACTS to the SDHR CPS Program Manager and the county reviewer. (Reference the FACTS Roadmap for Intra Agency CA/N Hearing Review).

If the preliminary review of the record determines that the person allegedly responsible for abuse or neglect is not entitled to a hearing as defined in the Code of Alabama 1975 §26-14-7.1, SDHR Administrative Record Review Staff will ask the county staff to request that their attorney file a motion with the Administrative Hearing Office to withdraw the Administrative Hearing Request. County staff must notify the SDHR Record Reviewer by e-mail or letter if the Motion to Withdraw is granted. Upon notification from county staff that the Motion to Withdraw has been granted, the SDHR Administrative Reviewer will provide written notification to the PARAN and the county office that he/she is not entitled to an Administrative Hearing but is eligible for an Administrative Record Review. The county office will update FACTS to reflect the change to an Administrative Record Review.

If the preliminary record review completed by SDHR Administrative Record Review Staff and the county reviewer determines that the PARAN is not entitled to an Administrative Hearing, he/she would be entitled to an Administrative Record Review. The SDHR Record Reviewer will notify the PARAN and/or the attorney of record in writing that an Administrative Record Review will be conducted in their case and of the PARAN's right to submit additional written information as part of the review process. The preliminary record review may be considered as the Administrative Record Review pending receipt of additional information from the PARAN. From this point, policies pertinent to Administrative Record Reviews apply, (Section III).

In situations of the PARAN being eligible for a hearing but the indicated disposition is being overturned, SDHR Administrative Record Review Staff will notify the county staff to request that their attorney file a motion to withdraw the Administrative Hearing Request. When the order granting the motion to withdraw is received, the county office will notify the SDHR Reviewer who will provide written notification of the review

decision to the PARAN and county office. The county office will then change the final disposition in FACTS.

If the preliminary record review upholds the indicated findings and the PARAN qualifies for an administrative hearing, the case will continue through the Administrative Hearing process. The SDHR Record Reviewer will notify the county office of review findings.

E. The CA/N Hearing

An administrative hearing officer from the Attorney General's Office conducts CA/N hearings. The hearings are not open to the public; however, an employer or licensing/certification representative may attend the hearing as a non-participant with the permission of both the person allegedly responsible for abuse/neglect and the Department. Hearings may be postponed or continued, as necessary, to ascertain all the facts or to provide a full and adequate opportunity for all parties to present their case.

The hearing officer determines by a preponderance of the credible evidence whether the person allegedly responsible for abuse/neglect has abused or neglected a child. Credible evidence is defined as "those facts which, viewed in light of the surrounding circumstances, would cause a reasonable person to believe that the child has been abused or neglected."

County Departments bear the burden of persuasion at the hearing, and present witnesses and evidence in support of their disposition in order to convince the hearing officer that the abuse/neglect allegations should be determined "indicated" according to *Child Protective Services Policy And Procedures*. Relevant and material evidence (including hearsay evidence), visual drawings and testimony about the use of anatomically correct dolls are admissible at the hearing. The child that was allegedly abused/neglected or a witness to the alleged abuse/neglect may testify at the hearing without prior qualification. The hearing officer determines the weight and credibility to be given to the testimony. Leading questions and videotaped testimony of the child who was allegedly abused/neglected or a child witness may be allowed.

The hearing officer makes the determination, based on evidence presented, to either affirm or reverse the County Department's disposition, and provides written notification of the decision to the person allegedly responsible for abuse/neglect. A copy of the determination letter is also sent to the County Department for documentation and filing in the CA/N record.

F. Post Hearing Procedures

Upon receipt of the hearing determination letter, child welfare staff shall enter the final disposition into the Central Registry. When an "indicated" disposition is upheld by the hearing officer, child welfare staff shall notify the person's employer or licensing/certifying agency as to the disposition and the basis for its finding when the incident involved abuse/neglect of a child in an out-of-home care setting. Child welfare

staff may notify the employer or licensing/certifying agency if the incident involved the person's own children.

The notification may be provided orally or in writing. If a letter is sent, it must be marked "Confidential -- To be used only for the purpose of discovering or preventing child abuse or neglect." A copy of the hearing decision upholding the disposition may also be sent with the letter to the employer or licensing/certifying agency.

Child welfare staff shall also provide notification of the disposition (per *CA/N Assessment* policy, section V., C.) to the appropriate District Attorney and law enforcement agency.

G. Appeals of Administrative Hearings

The person responsible for abuse/neglect or the County Department may appeal a CA/N hearing disposition. To contest the disposition, the appealing party must file an application for re-hearing **within fifteen (15) days after the entry of the order** (i.e., the date the order was signed and mailed from the Administrative Hearing Office).

County Departments may also request an appeal (re-hearing) if the hearing officer's decision is not in the Department's favor. County staff must consult with the attorney who represented them at the hearing to determine whether they have grounds for an appeal. Reasons for an appeal/re-hearing (Code of Alabama 1975, § 41-22-17) are if the hearing officer's final order is:

- in violation of constitutional or statutory provisions;
- in excess of the statutory authority of the agency;
- in violation of an agency rule;
- made upon unlawful procedures;
- affected by other error of law;
- clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- unreasonable, arbitrary, capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

Within thirty (30) days from the re-hearing application's filing date, the hearing officer may enter an order:

- setting a date for a hearing based on the re-hearing application; or
- with reference to the application with no hearing date set, grant or deny the application.

If an order is not entered regarding the re-hearing application within the thirty (30) day period, the application will be considered denied as of the date the thirty (30) day period expires.

Regardless of whether an appeal/re-hearing is requested, both the person responsible for the abuse/neglect and the County Department may file an appeal with the circuit court. Court appeals are initiated by filing a written notice of appeal within thirty (30) days of the receipt of the hearing officer's decision. County Departments must consult with SDHR Legal prior to filing an appeal with the court.

III. ADMINISTRATIVE RECORD REVIEWS

Administrative record reviews are provided to persons allegedly responsible for abuse/neglect who have preliminary "indicated" dispositions and are **not** entitled to an administrative hearing. The record review is completed to determine if the CA/N assessment contains sufficient documentation based on a preponderance of credible evidence to support the "indicated" disposition of child abuse/neglect. References in the CA/N record to previous incidents of abuse/neglect, information from the on-going service case record, and additional information provided by the person allegedly responsible for abuse/neglect are considered when reviewing the CA/N record and reaching the final disposition.

A. Administrative Record Reviews in Cases That Involve Possible Criminal Prosecution

In child abuse and neglect investigations with a preliminary indicated disposition and which possible criminal prosecution by local District Attorney's offices (DA) is under consideration, certain procedures concerning administrative record reviews are to be followed. This includes any cases that DHR may have referred to the DA, as well as any case the DA has been working with law enforcement. Administrative record review procedures, in cases that are being considered for criminal prosecution, will be delayed for six (6) months until the criminal prosecution is either underway or in process, finalized, or a determination is made by the local DA not to go forward with criminal prosecution.

In working with DA offices, county departments may share copies of the letters offering administrative record reviews to PARANs or any other material in the CA/N record. If the county department has already initiated the administrative record review process and then learns of DA involvement and possible prosecution, the administrative record review process should cease for a period of six (6) months to allow the DA office to make a determination on criminal prosecution. County departments should provide DAs with copies of PARAN letters in these cases.

Note: There may be cases in which due process and administrative record review process has been completed at the time the department learns of DA involvement. Should this occur, the county may share the PARAN letters with the DA and any other material in the CA/N record.

County departments will need to develop the local protocol with their DA and law enforcement that will include structured procedures to address delays in administrative record reviews when criminal prosecution is under consideration. The protocol should include the following considerations:

1. County Department is responsible for informing the DA and law enforcement about the Department's administrative record review process, its purpose and its end result. (Refer to the document "ARR Points for Discussion With District Attorneys and Law Enforcement" located in the Appendix).
2. County Department provides written notification to DA that the administrative record review process of the child abuse/neglect investigation is pending and will be conducted after six (6) months from the date the report is determined as "indicated."
3. The county department should schedule a conference with the DA to discuss the status of any criminal prosecution in the case.
4. After the meeting with the DA, in which the DA indicates that prosecution does not appear probable, the county department is to provide a written statement to the DA that unless other information is received within 10 days from the date of the letter, the department's administrative record review will go forward.
5. In situations that prosecution is indicated at the meeting with the DA, but the prosecution has not gone forward within six (6) months; or there is no definite decision about prosecution; or if the case is not yet set for trial county departments are to contact the Office of Child Protective Services, prior to going forward with the administrative record review, for further guidance.

During the six (6) months delay awaiting the outcome/status of the criminal prosecution, the case needs to be maintained on the agenda of the local multi-disciplinary team or regular meetings of the child advocacy centers in the counties, which includes representation from the District Attorney's office. The county DHR representative on this team should alert the team that an administrative record review will be performed after six (6) months.

B. Notification Procedures for Administrative Record Reviews

The following procedures are used in notifying each person identified as responsible for abuse/neglect who qualifies for an administrative record review.

- Upon completion of the CA/N assessment and prior to entering the "indicated" disposition into the Central Registry, child welfare staff shall provide all persons identified as being responsible for abuse/neglect with written notification of their right to an administrative record review. Each person identified as responsible for abuse/neglect must be sent a separate letter. If the person is a minor (i.e., under age 19), the notification must be sent in care of the minor's parents or legal custodian who may request the review on behalf of the child. If the minor is a child in foster care, the legal custodian, foster care provider and/or guardian ad litem may request the record review.

- Notification letters may be provided to the person allegedly responsible for abuse/neglect by mail or hand-delivery. If mailed, send the notice in the form of a certified letter, restricted delivery, return receipt requested **and** by first-class mail with “Personal and Confidential” marked on the outside of the envelope. The letter must be mailed the same day as the date on the letter. If hand-delivered, child welfare staff shall document the delivery date in FACTS. Retain a copy of the notification letter in the CA/N record.
- Notification letters shall contain, at a minimum, the following statements.

“The Department has concluded its assessment of the abuse/neglect allegations where you were identified as being responsible for the abuse/neglect. The assessment revealed that on or about {*enter the date*} at {*enter the location when known*} you {*provide a brief, but specific description of the incident (e.g., left 4 year old ‘child’s name’ at home by herself from approximately 8:00 a.m. to 11:00 a.m.) – it is not appropriate to list **only** the allegation*}. We have reached a preliminary disposition of “indicated,” and the basis for this disposition is *describe the basis for the finding*. Our findings will be entered in the Department’s Child Abuse and Neglect Central Registry as required by state law, Code of Alabama, 1975 Section 26-14-8. Before making a final determination on the abuse/neglect allegations, we are offering you the opportunity to request an administrative record review. This means the case record will be reviewed by an independent panel of DHR representatives.

If you want to request an administrative record review to contest our findings, you must notify us within ten (10) working days from the date of receipt of this letter. You must submit your request in writing to the County Department at the address shown at the top of this letter. You may include any written information that, in your opinion, proves the findings are not true. The County Department must receive your written request no later than the 10th day from the date of receipt of this letter. If we do not hear from you within this time, your opportunity for an administrative record review will be considered waived.”

- The person allegedly responsible for abuse/neglect has ten (10) working days from the date of receipt of the letter to submit a written request for an administrative record review. If the person fails to provide the written request to the County DHR office within the designated timeframe, the opportunity for an administrative record review is considered to be waived. Child welfare staff shall then enter the “indicated” disposition into FACTS. Refer to FACTS, Roadmaps, Intake and Investigations, Administrative Record Review Due Process Flow, for directions on entering “indicated” dispositions in FACTS.
- When the person allegedly responsible for abuse/neglect submits the written request for an administrative record review within the designated timeframe, child welfare staff must enter the date the request was received into FACTS. Refer to FACTS, Roadmaps, Intake and Investigations, Administrative Record Review Due Process Flow, for directions on entering requests for administrative record review on FACTS.
- FACTS will automatically make an administrative assignment to the SDHR administrative record review clerk. The State administrative record review clerk shall process the case, provide written notification to the person allegedly responsible for abuse/neglect that their request has been received and will reassign the case to a SDHR reviewer.

- The State administrative record reviewer shall review all CA/N assessment material that is relevant to the case. The reviewer may also request that the County Department obtain additional information related to the CA/N assessment either prior to or after reaching a determination. The State administrative record reviewer will contact the County Director (or designee) to coordinate and complete the review process.
- When the review has been completed, the State administrative record reviewer will provide the person allegedly responsible for abuse/neglect with written notification of the review decision. A copy of the decision, which is considered final, will be sent to the county for filing in the CA/N record.
- Child welfare staff shall then enter the final disposition (as determined by the administrative record reviewers) into the Central Registry.