

DECLARATION OF EMERGENCY

Children and Family Services Division of Child Welfare

Criminal Background and State Central Registry Checks;
State Repository, Central Registry
and Administrative Appeal
(LAC 67:I. 203, and 67:V. 1103, 1105 and 1111)

The Department of Children and Family Services (DCFS) has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953 (B) to amend LAC 67:I, Chapter 2, Section 203; and LAC 67:V, Sections 1103, 1105 and 1111.

These sections are being amended to update the effective date for implementation for certain provisions related to an administrative appeal when DCFS intends to justify/validate individuals for their involvement as a perpetrator of child abuse and/or neglect. This declaration is necessary to extend the original Emergency Rule since it is effective for a maximum of 120 days and will expire before the Final Rule takes effect. This Emergency Rule extension is effective on October 29, 2018 and will remain in effect until the Final Rule becomes effective.

The department considers emergency action necessary to ensure appropriate decision making with justified (valid) determinations of child abuse and neglect prior to the implementation of Children's Code Article 616.1.1.

Title 67

SOCIAL SERVICES

Part 1. General Administration

Chapter 2. Criminal Background and State Central Registry Checks

§203. Conditions of Employment

A. – A.2. ...

3. If the potential employee's name is recorded on the state central registry subsequent to January 1, 2010 and prior to August 1, 2018, they shall not be denied consideration for employment until the potential employee has exhausted their right to an administrative appeal and thereafter the potential employee's name is confirmed to be listed on the state central registry.

4. If the individual's name is recorded on the state central registry as a perpetrator of child abuse or neglect subsequent to August 1, 2018, they shall not be employed or considered for employment by the department in positions whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys.

B. Any current employee of the department whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys and whose name is recorded subsequent to January 1, 2010 and prior to August 1, 2018, shall not be terminated from their position in the department until the employee has exhausted their right to an administrative appeal and thereafter the employee's name is confirmed to be listed on the state central registry. If the employee's name is recorded on the state central registry subsequent to August 1, 2018, they shall be terminated from their current position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct

care of a child, or performance of licensing surveys by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:51.2.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:851 (April 2010), amended by the Department of Children and Family Services, Division of Child Welfare, LR 44:997 (June 2018), amended LR 44:

Part V. Child Welfare

Subpart 3. Child Protective Services

Chapter 11. Administration and Authority

§1103. State Central Registry

A. B.1.b. ...

2. Individuals who have been placed on the SCR as a perpetrator of abuse or neglect as the result of an investigation determined to be justified/valid prior to August 1, 2018, will have the right to an administrative appeal pursuant to LAC 67:V.1111. Information on such determinations will not be released until the individual has exhausted their right to an administrative appeal, unless otherwise allowed by law. Once the individual has exhausted their administrative appeal rights, if an SCR clearance has been received by DCFS, the clearance will be completed and information released consistent with the administrative hearing decision and as permitted for the purpose of the clearance request.

C.1. ...

2. Individuals in investigations in families who have been determined to be justified/valid as a perpetrator of child abuse and/or neglect for a tier 1, 2, or 3 finding, as defined in LAC 67:V.1103.A, subsequent to July 1, 2018, shall be provided written notice of the SCR and the rules governing maintenance and release of SCR records. As of August 1, 2018, the written notice shall also inform the individual of their right to an administrative appeal pursuant to LAC 67:V.1111. The individual's name will not be placed on the SCR until the individual has exhausted his right to an administrative appeal. If the individual fails to request an administrative appeal within 30 days of the written notification of the justified/valid finding, withdraws their request for an administrative appeal, or the justified/valid finding is upheld by an administrative law judge, the individual's name will be immediately placed on the SCR.

D. – E. ...

F.1. Any person whose name is included on the SCR subsequent to August 1, 2018, may file a rule to show cause against DCFS in the court exercising juvenile jurisdiction in the parish in which the investigation was conducted to show why the individual's name should not be removed from the SCR. A perpetrator of a tier 1 justified/valid determination cannot be removed through this procedure. This rule to show cause may be filed for a perpetrator of a tier 2 justified/valid determination after nine years from the date of the case closure, or, four years from the date of the case closure for a perpetrator of a tier 3 justified/valid determination with the following circumstances:

- a. there was no child in need of care adjudication related to the justified/valid determination;
- b. no criminal charges are currently pending, associated with the incident, or criminal conviction for any offense listed in R.S. 15:587.1; and
- c. there have been no subsequent justified/valid determinations involving the individual as a perpetrator of child abuse or neglect.

2. – G.11. ...

AUTHORITY NOTE: Promulgated in accordance with the Children’s Code, title VI, articles 615 and 616 and title XII, article 1173, R.S. 14:403(H), R.S. 46:51.2(A), R.S. 46:56, R.S. 46:1414.1, 42 USC 15601 et seq., 28 CFR 115.6., and 42 USC 9858f.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 18:79 (January 1992), amended LR 20:198 (February 1994), LR 21:583 (June 1995), LR 23:590 (May 1997), LR 26:790 (April 2000), LR 31:1609 (July 2005), LR 36:838 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Child Welfare Section, LR 42:862 (June 2016), amended by the Department of Children and Family Services, Division of Child Welfare, LR 44:998 (June 2018), amended LR 44:

§1105. Maintenance and Disclosure of Information on Reports and Investigations on the State Repository

A. – L.7. ...

M. Any person whose name is included on the SCR prior to August 1, 2018 with a justified/valid determination may file a rule to show cause against DCFS in the court exercising juvenile jurisdiction in the parish in which the investigation was conducted to show why the information on file should not be expunged. DCFS will expunge the petitioner's name and other identifying information from the SCR upon receipt of a court order to do so. Any expungement order issued by a court shall not take effect as to non-identifying statistical information on file until the three-year record retention period required by federal law for audit purposes has expired, counting from the month and year of the determination. During the three-year record retention period, such records bearing the non-identifying statistical information shall be sealed and accessible only to the financial auditors.

N. – O. ...

AUTHORITY NOTE: Promulgated in accordance with Louisiana Children’s Code Article 616.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 26:96 (January 2000), amended LR 31:1608 (July 2005), LR 36:840 (April 2010), amended by the Department of Children and Family Services, Division of Child Welfare, LR 44:1000 (June 2018), amended LR 44:

§1111. Child Protective Services Administrative Appeal

A. ...

B. Individuals with justified/valid findings in an investigation prior to August 1, 2018, will have the right to an administrative appeal of any/all of their DCFS findings of justified/valid. When a request for an SCR clearance is received by DCFS, or DCFS verifies that an individual has a justified/valid finding, and the individual is listed as a perpetrator with a justified/valid finding of abuse or neglect in an investigation prior to August 1, 2018; the individual will be notified in writing of their right to an administrative appeal. The individual will have 30 calendar days from the date of the written notification to request an appeal through DAL.

C. Any individual notified of a DCFS justified/valid finding in an investigation subsequent to August 1, 2018, will have the right to an administrative appeal of any/all of their DCFS findings of justified/valid. The individual will have 30 calendar days from the date of the written notification to request an appeal through the DAL.

D. – K. ...

AUTHORITY NOTE: Promulgated in accordance with Act 348 of 2017 and Children’s Code Article 616.1.1.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Child Welfare, LR 44:1002 (June 2018), amended LR 44:

Marketa Garner Walters
Secretary

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