

CHAPTER 129A**CHILD PROTECTIVE SERVICE INVESTIGATIONS
AND DETERMINATIONS OF ABUSE AND
NEGLECT****Authority**

N.J.S.A. 9:6-8.15.

Source and Effective Date

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SUBCHAPTER 1. GENERAL PROVISIONS**10:129A-1.1 Authority**

The Division of Youth and Family Services, Department of Human Services, is authorized under N.J.S.A. 9:6-8.11 and 30:4C-11 and 12 to investigate allegations of child

abuse and neglect and to determine whether a child has been abused or neglected.

10:129A-1.2 Purpose

The purpose of this chapter is to establish rules for the Division's child protective service investigations and decision-making regarding the findings resulting from investigations, and to specify and ensure the rights of persons named as perpetrators, parents, children, caretakers, temporary caretakers, institutional caretakers, and referral sources.

10:129A-1.3 Scope

The provisions of this chapter shall apply to each child who has been alleged to be abused or neglected, each child at risk of abuse or neglect, or each child who may be at risk of harm or injury due to treatment of medical conditions by spiritual means alone, their parents, caretakers, temporary caretakers, institutional caretakers, persons named as perpetrators of child abuse or neglect, referral sources, and the Division.

10:129A-1.4 Definitions

The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Caretaker" means a foster parent, adoption home parent, or other person who has assumed full time physical custody of a child, but does not include an institutional caretaker or temporary caretaker as defined below.

"Department" means the New Jersey Department of Human Services.

"Division" means the Division of Youth and Family Services, New Jersey Department of Human Services.

"Finding" means the official determination by the Division of the results of a child protective service investigation.

"Institution" means any facility, public or private, in-state, which provides children with out-of-home care, supervision or maintenance. The term institution includes, but is not limited to, a correctional facility, detention facility, treatment facility, public or private day school, residential school, shelter, hospital, camp, day care center that is licensed or should be licensed, foster homes, group homes and registered family day care homes.

"Institutional caretaker" means a teacher, employee or volunteer, whether compensated or uncompensated, of an institution or day school who is responsible for the child's welfare and any other staff person of an institution, regardless of whether or not the person is responsible for the care or supervision of the child. Institutional caretaker also

includes the chief administrator responsible for the operation of an institution or facility.

“Investigation” or “child protective service investigation” means the activity of gathering all information relevant to making a determination as to whether child abuse or neglect occurred.

“Office manager” means a Division employee charged with the direction of a field office of the Division.

“Perpetrator” means a person who has been determined by the Division to have inflicted or allowed to be inflicted child abuse or neglect.

“Protective custody” means the taking of a child into custody by a physician, director of a hospital or his or her designee pursuant to N.J.S.A. 9:6-8.16.

“Temporary caretaker” means a person who has assumed temporary care, custody, or control of a child but does not include an institutional caretaker or caretaker as defined above and does not include a police officer acting in an official capacity.

SUBCHAPTER 2. CHILD PROTECTIVE SERVICE INVESTIGATION

10:129A-2.1 Situations requiring investigations

(a) A Division representative will be assigned to and shall investigate each referral presenting reasonable cause to believe that a child may be an abused or neglected child and each referral stating that a child has been taken into protective custody.

(b) Each referral in which the harm alleged to a child is the result of treatment for a medical condition by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall be handled by the Division in accordance with this chapter and N.J.A.C. 10:133A and 10:133C.

(c) A Division representative shall conduct a child protective service investigation in response to each referral alleging child abuse or neglect on a military installation, to the extent permitted by the base commander, in accordance with U.S. Department of Defense Directive 6400.1, this chapter and N.J.A.C. 10:133A.

(d) A Division representative shall investigate each referral alleging institutional medical neglect of a child who is in a health care facility, including a child who is identified as a disabled infant with a life threatening condition as per “The Child Abuse Prevention, Adoption, and Family Services Act of 1988,” P.L. 100-294, 42 U.S.C. 5101 et seq.

10:129A-2.2 Time frames for initiating an investigation

The Division representative shall begin his or her investigation in accordance with time frames set forth in N.J.A.C. 10:133A-1.10, Situations requiring immediate response, and 1.11, Situations which indicate a response within 24 to 72 hours.

10:129A-2.3 Contacts during an investigation

(a) The Division representative shall, in conducting an investigation, interview the child subject of the referral. The Division representative shall use sensitivity in interviewing the child to avoid further trauma to the child.

(b) The Division representative shall interview the following persons:

1. The parent, caretaker, temporary caretaker responsible for the child at the time of the incident, or institutional caretaker responsible for the child at the time of the incident;
2. Any other child who resides in the same home;
3. Any other adult member of the household in which the child lives;
4. Any identified witness to the incident; and
5. Each alleged perpetrator.

(c) In addition, the Division representative shall, in conducting an investigation, make contact with those persons who, by virtue of their relationship to the child, family or the incident, may have information necessary to:

1. Determine whether or not a child is an abused or neglected child;
2. Determine who the perpetrator is;
3. Assess the needs or problems of the child and his or her family;
4. Determine the appropriate intervention or service; or
5. Arrange for service provision.

10:129A-2.4 Evaluations, treatment and services

(a) The Division representative shall obtain permission from a parent or, in the absence of such permission, obtain a court order to arrange for the child and each of his or her siblings and any other child in the household to receive appropriate medical evaluation and treatment whenever:

1. The child has suffered serious physical harm;
2. The allegation or other information gathered indicates that the child suffered internal injury; or
3. The allegation or other information gathered indicates that the child suffered sexual abuse.

(b) Whenever a child has been removed from his or her home, the Division representative shall arrange for the child and each of his or her siblings or any other child in the household to receive appropriate medical evaluation and treatment, pursuant to N.J.S.A. 9:6-8.30.

(c) With parental cooperation or with a court order, the Division representative may arrange for a psychiatric or psychological evaluation for the child, whenever the Division representative has reason to believe that the allegation or other information gathered indicates that the child may have suffered serious emotional harm.

(d) The Division shall provide services as necessary to a child or to his or her family, within the limits of legislative appropriations to the Division for the provision of services to all eligible children and families in similar circumstances. The provision of services shall also be subject to limitations due to actual ability of the Division to provide such services directly or by purchasing such services from appropriate privately sponsored agencies or institutions.

10:129A-2.5 General procedures for conducting an investigation

(a) The Division representative shall, in conducting the investigation:

1. Observe the physical and emotional state of the child alleged to be abused or neglected and the physical evidence of harm or injury to the child that is visible without disrobing the child, except as described in (b)3 below;
2. Observe the physical and emotional state of the parent, caretaker, temporary caretaker, institutional caretaker, or alleged perpetrator responsible for the child at the time of the alleged abuse or neglect;
3. Observe the physical surroundings and residence of the child when relevant to the investigation; and
4. Assess the harm or risk of harm to the child and each of his or her siblings and any other child in the home or in the care of the alleged perpetrator.

(b) The Division representative may, in conducting the investigation:

1. Except as in N.J.A.C. 6:29-9.2(a)7, interview the child subject of the investigation and other children in the household or institution apart from his or her parent, caretaker, temporary caretaker or institutional caretaker;
2. Make unannounced visits to the child's residence or place where the child or parents are located;
3. Remove, move or cause to be moved or removed only that clothing necessary to view suspected injuries located on portions of the child's body covered with clothing. This shall be done in a manner consistent with the child's sense of privacy, and in consideration of the age, sex and emotional state of the child and the need to

limit the number of physical examinations the child may undergo. Except in emergency situations, this shall be done only in the presence of an adult supportive of the child; or

4. Photograph or arrange to photograph the child's injuries or harm, whenever there are visible indications of harm or injuries and subsequently to record the results of the injuries or harm.

10:129A-2.6 Law enforcement assistance

(a) The Division representative shall request appropriate assistance in conducting an investigation from local and state law enforcement officials pursuant to N.J.S.A. 9:6-8.28 and 8.29 whenever:

1. The Division representative needs personal protection;
2. The nature of the case suggests it, for example, death of a child;
3. There is an immediately life-threatening situation; or
4. Violence is occurring or is immediately threatened.

10:129A-2.7 Information provided during investigation

(a) The Division representative shall notify the parent of the child subject of the investigation and the caretaker of the child subject of the investigation, if the child will remain in the custody of the caretaker, as soon as possible after interviewing or observing the child or any of his or her siblings that the child(ren) has been interviewed or observed.

1. When the police, prosecutor or Deputy Attorney General has determined that notifying the parent or caretaker of the child would impede the investigation or litigation, the Division shall delay notifying the parent or caretaker as long as the delay does not appear to put the child at risk.

(b) When an investigation is conducted in an institution, and any child other than the child subject of the investigation is interviewed without the knowledge and consent of the parent, the Division shall not be obligated to notify the parents of those children of the investigation, except when abuse or neglect is substantiated and that child was abused or neglected.

(c) When an emergency removal is made pursuant to N.J.S.A. 9:6-8.29, the Division representative shall make every reasonable effort to notify the child's parent, and the caretaker, temporary caretaker or institutional caretaker responsible for the child at the time of the removal.

(d) A Division representative shall immediately serve or attempt to serve written notice upon the parent, caretaker, and chief administrator of an institution from which the child was removed, whenever a child has been taken into

protective custody as defined herein and shall begin a child protective service investigation immediately.

SUBCHAPTER 3. INFORMATION PROVIDED ABOUT THE INVESTIGATION AND FINDINGS

10:129A-3.1 Informing the child, parent, caretaker, institutional caretaker about the investigation

(a) The Division representative shall inform the child subject of an investigation in accordance with the child's capacity to understand and cope with the information and shall inform the child's parent or caretaker with physical custody at the time of the incident; the parent with whom the child normally resides; the parent to whom the child will be returned, if the child is in an institution at the time of the incident; and the chief administrator of the institution in which the child may have been abused or neglected:

1. That a child protective service referral has been made, the nature of the allegation(s), and that an investigation will be conducted;
2. Of the names and telephone numbers of the Division representative assigned to investigate and his or her supervisor; and
3. That the Division is responsible for conducting an investigation pursuant to N.J.S.A. 30:4C-11 and 12 and 9:6-8.11.

(b) When the police, prosecutor or Deputy Attorney General has determined that notifying the child, the parent or caretaker with physical custody at the time of the incident, the parent to whom the child in an institution will be returned and the chief administrator of the institution would impede the investigation or litigation, the Division shall delay notifying them as long as the delay does not appear to put the child at risk.

(c) The information to be provided by the Division representative in accordance with the provisions of (a) above, shall be provided at the time of the initial contact between the Division representative and each person interviewed and named in (a) above.

(d) The Division representative shall inform the temporary caretaker of any child alleged to be an abused or neglected child who is in the care of that temporary caretaker at the time of the investigation of the provisions of (a) above, when that information is necessary for the temporary caretaker to provide care for the child.

Administrative correction.
See: 27 N.J.R. 3956(b).

10:129A-3.2 Information provided to alleged perpetrator about the investigation

(a) The Division representative shall inform each person specifically alleged to be a perpetrator of child abuse or neglect, upon initial contact regarding the provisions of N.J.A.C. 10:129A-3.1(a) and that he or she has been named the alleged perpetrator of child abuse or neglect, except for cases in litigation and for which the police, prosecutor, or Deputy Attorney General has determined that providing such information would interfere with the proceedings, or cases in which providing such information will jeopardize the investigation.

(b) The information to be provided by the Division representative in accordance with the provisions of N.J.A.C. 10:129A-3.1(a), shall be provided at the time of the initial contact between the Division representative and each alleged perpetrator interviewed unless the police, prosecutor, or Deputy Attorney General advises the Division representative to delay providing the information, or cases in which providing such information will jeopardize the investigation.

10:129A-3.3 Investigation findings

(a) The Division representative shall evaluate the available information and, for each allegation, determine whether child abuse or neglect has occurred and shall make a finding of:

1. "Substantiated" when the available information, as evaluated by the Division representative, indicates that a child is an abused or neglected child as defined in N.J.A.C. 10:133-1.3 because the child has been harmed or placed at risk of harm by a parent, caretaker, temporary caretaker or institutional caretaker.

i. A child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for this reason alone, be considered to be an abused or neglected child, nor shall this condition preclude the Division from providing service or seeking court relief as in N.J.A.C. 10:129A-3.4 below;

2. "Not substantiated" when the available information, as evaluated by the Division representative, provides some indication that a child was harmed or placed at risk of harm, but does not indicate that the child is an abused or neglected child as defined in N.J.A.C. 10:133-1.3; or

3. "Unfounded" when:

i. There is no evidence of conduct that would pose risk to the child;

ii. There is no evidence that a parent, caretaker, temporary caretaker, institutional caretaker or child was involved; or

iii. The available information indicates that the actions of the parent, caretaker, temporary caretaker, or institutional caretaker were necessary and reasonable and the incident was an accident.

(b) The Division representative shall make every reasonable effort to identify the perpetrator for each allegation of child abuse or neglect.

(c) Except for good cause approved by the office manager, the determination of investigation findings shall be made within 45 days of the Division's receipt of the referral.

Case Notes

While Department of Youth and Family Services had statutory authority to investigate child abuse allegations against teacher and to notify the school district of its finding that the allegations were 'not substantiated' but that DYFS had 'concerns' about the teacher's conduct, it did not have authority to order school district to take specific corrective action or submit remedial plan. In the Matter of an Allegation of Physical Abuse Concerning L.R., 321 N.J. Super. 444, 279 A.2d 563 (N.J. Super. A.D. 1999).

Although inclusion of mother's name on central registry for child abusers, after allegations of child abuse were determined to be substantiated, implicated her interests in reputation, family life, and ability to work in child-care related job, it did not implicate a liberty or property right, so as to invoke procedural protection of due process clause. New Jersey Div. of Youth & Family Services v. M.R., 314 N.J. Super. 390, 715 A.2d 308 (N.J. Super. A.D. 1998).

Teacher had protectible due process liberty interest at stake, with respect to inclusion of her name on Division of Youth and Family Services' (DYFS) central registry for child abusers; inclusion stigmatized teacher as child abuser, and that stigmatization impaired teacher's employment rights, despite fact that teacher was tenured and did not assert interest in changing jobs. Matter of Allegations of Sexual Abuse at East Park High School, 314 N.J. Super. 149, 714 A.2d 339, 14 IER Cases 284 (N.J. Super. A.D. 1998).

10:129A-3.4 Notification of findings

(a) A Division representative shall provide notification of the specific finding of the investigation to those persons specified in (c) through (g) below.

1. When a case is in litigation or under investigation and the police, prosecutor or Deputy Attorney General has determined that notification of the investigation findings to persons in (c) through (g) below, would interfere with the litigation, the Division shall delay the notification as long as the delay does not appear to put the child at risk.

(b) Unless for good cause approved by the office manager, the Division shall notify persons specified no later than 60 days from the date upon which the Division received the referral or the prosecutor's investigation or litigation is terminated.

(c) Each person identified as the perpetrator in a case of substantiated child abuse or neglect shall be advised that:

1. He or she has been identified as a perpetrator of child abuse or neglect;

2. His or her name and identifying information are entered into the Division's Central Registry, N.J.S.A. 9:6-8.11; and

3. He or she may have an opportunity to dispute the findings of a local Division office or institutional abuse investigation unit of the Division in accordance with N.J.A.C. 10:120A.

(d) Except as limited by (a) or (b) above, each person named as the alleged perpetrator in a case where child abuse or neglect was not substantiated shall be advised of the finding.

(e) Except as limited by (a) and (b) above, each person named as the alleged perpetrator in a case where child abuse or neglect was unfounded shall be advised of the finding.

(f) The Division representative shall advise, upon completion of the investigation, the parent or caretaker with physical custody at the time of the incident; the parent with whom the child normally resides; the parent to whom the child will be returned, if the child is in an institution at the time of the incident; and the institutional caretaker or chief administrator of an institution, if the child is in institutional placement:

1. That the investigation has been completed and the finding of the investigation; and

2. Whether further services will be offered or provided to him or her and to his or her family, except in cases involving institutional abuse or neglect.

(g) The Division representative shall advise a child subject of an investigation in a manner determined by the Division representative to be consistent with the child's ability to understand and cope with the information, upon completion of the investigation:

1. That the investigation has been completed and the finding of the investigation; and

2. What efforts will be made to protect him or her from further harm and how such protection will occur.

(h) The Division shall provide notice to the referral source that the investigation has been completed.

(i) The Division may advise others, including the non-custodial parent, of investigation findings only as permitted under N.J.S.A. 9:6-8.10a.

Administrative correction.
See: 27 N.J.R. 3956(b).

Case Notes

Department of Youth and Family Services' written notification to parents of students who were subject of abuse investigation at private day school, which informed parents of investigation's results, did not implicate any liberty or property interest entitling either school or

principal to due process protections required in adjudicatory proceedings. In re Allegations of Physical Abuse at Blackacre Academy, 304 N.J.Super. 168, 698 A.2d 1275 (A.D. 1997).