

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

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

Source and Effective DateR.2000 d.394, effective September 6, 2000.
See: 32 N.J.R. 1362(a), 32 N.J.R. 3571(a).**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 129A, Child Protective Service Investigations and Determinations of Abuse and Neglect, expires on March 4, 2006. See: 37 N.J.R. 2132(a).

Chapter Historical Note

Chapter 129A, Child Protective Service Investigations and Determinations of Abuse and Neglect, was adopted as R.1995 d.510, effective September 18, 1995. See: 26 N.J.R. 3700(a), 27 N.J.R. 3609(a), 27 N.J.R. 3956(b).

Subchapter 4, Expunction of Records, was adopted as R.1999 d.243, effective August 2, 1999. See: 30 N.J.R. 3913(a), 31 N.J.R. 2211(b).

Pursuant to Executive Order No. 66(1978), Chapter 129A, Child Protective Service Investigations and Determinations of Abuse and Neglect, was readopted as R.2000 d.394, effective September 6, 2000. See: Source and Effective Date. See, also, section annotations.

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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, the Office of the Public Defender's, when acting as the Division's agent in conflict matters in child protective service investigations, and the Institutional Abuse Investigation Unit'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, caregivers, temporary caregivers, institutional caregivers, and referral sources.

Amended by R.2000 d.394, effective October 2, 2000.
See: 32 N.J.R. 1362(a), 32 N.J.R. 3571(a).Substituted "caregivers" for "caretakers" throughout.
Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).
Rewrote the section.**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, caregivers, temporary caregivers, institutional caregivers, persons named as perpetrators of child abuse or neglect, referral sources, the police, the Division, the Department, and the Office of the Public Defender, when acting as the Division's agent in conflict matters in child protective service investigations.

Amended by R.1999 d.243, effective August 2, 1999.
See: 30 N.J.R. 3913(a), 31 N.J.R. 2211(b).Inserted a reference to the police.
Amended by R.2000 d.394, effective October 2, 2000.
See: 32 N.J.R. 1362(a), 32 N.J.R. 3571(a).Substituted "caregivers" for "caretakers" throughout.
Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).
Rewrote the section.

10:129A-1.4 Definitions

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

“Caregiver” means a foster parent, adoptive parent, or other person who has assumed full time physical custody of a child, but does not include an institutional caregiver or temporary caregiver 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.

“Division representative” means a professional employee of the Division of Youth and Family Services, the Institutional Abuse Investigation Unit, or the Office of the Public Defender, acting as the Division’s agent in conflict matters in child protective service investigations.

“Expunction” or “expunge” means the destruction, erasure and complete eradication of a record.

“Finding” means the official determination by the Division representative of the results of a child protective service investigation.

“Initiate an investigation” means take action, as necessary, to see an identified child victim of child abuse or neglect within a specified time frame, or, if unable to contact the child in person, to make a good faith attempt to see the child.

“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 Abuse Investigation Unit” or “IAIU” means the Department of Human Services’ unit charged with the responsibility of investigating allegations of abuse or neglect in out-of-home settings, excluding DYFS-operated facilities.

“Institutional caregiver” 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 caregiver 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, a Department employee, or an employee of the Office of the Public Defender charged with the direction of an office whose Division representatives conduct child protective service investigations.

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

“Police” means the law enforcement agency responsible for keeping the peace in a given community. The term encompasses local police departments, State police troops for communities that do not have local police protection, and military police for communities located on military installations or on Federal land.

“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.

“Record” means the file in which the Division maintains information regarding Division intervention with a child. “Record” means both the computer file and the corresponding paper file, unless otherwise noted. “Record” includes both child welfare information and protective service information, as defined in N.J.A.C. 10:133-1.3, including information gathered from and provided by referral sources and collateral sources.

“Report” means an account or statement describing a specific incident or set of circumstances of suspected child abuse or neglect.

“Temporary caregiver” means a person who has assumed temporary care, custody, or control of a child but does not include an institutional caregiver or caregiver as defined above nor a police officer acting in an official capacity.

“Unfounded report” means a written Division report in which it is stated that a Division representative, after conducting a comprehensive investigation, is unable to document by a preponderance of evidence that a child is an abused or neglected child, as defined in N.J.S.A. 9:6-8.21.

“Withholding of medically indicated treatment” means the failure to respond to a disabled child’s life-threatening condition by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician’s reasonable judgment, will most likely be effective in ameliorating or correcting all such conditions. The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication to a child when, in the treating physician’s reasonable medical judgment:

1. The child is chronically and irreversibly comatose;
2. The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the child's life-threatening conditions, or otherwise be futile in terms of the survival of the child; or
3. The provision of such treatment would be virtually futile in terms of the survival of the child and the treatment itself under such circumstances would be inhumane.

Amended by R.1999 d.243, effective August 2, 1999.

See: 30 N.J.R. 3913(a), 31 N.J.R. 2211(b).

Inserted "Expunction" or "expunge", "Police", "Record", "Unfounded referral report", and "Withholding of medically indicated treatment".

Amended by R.2000 d.394, effective October 2, 2000.

See: 32 N.J.R. 1362(a), 32 N.J.R. 3571(a).

Substituted "caregiver" for "caretaker" throughout.

Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).

See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).

In "Finding", inserted "representative following "Division"; rewrote "Office manager", and "Unfounded report"; added "Division representative", "Initiate an investigation", "Institutional Abuse Investigation Unit", and "Report".

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 report presenting reasonable cause to believe that a child may be an abused or neglected child and each report stating that a child has been taken into protective custody.

(b) Each report 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.

(c) A Division representative shall conduct a child protective service investigation in response to each report 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, and this chapter.

(d) A Division representative shall investigate each report alleging the withholding of medically indicated treatment from a child who is in a health care facility, including a child who is identified as a disabled child with a life-threatening condition as per "The Child Abuse Prevention and Treatment Act of 1996," 42 U.S.C. § 5106a.

Amended by R.1999 d.243, effective August 2, 1999.

See: 30 N.J.R. 3913(a), 31 N.J.R. 2211(b).

Rewrote (d).

Amended by R.2000 d.394, effective October 2, 2000.

See: 32 N.J.R. 1362(a), 32 N.J.R. 3571(a).

Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).

See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).

In (b) and (c), deleted the N.J.A.C. reference; substituted "report" for "referral" throughout.

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

The Division representative shall initiate an investigation immediately, within two hours of the Division accepting the report and determining that an immediate response is needed. Investigations of all other accepted reports shall be initiated within 24 hours of receipt of the report, unless the Division or other entity authorizes a delay based upon the request of a law enforcement official, pursuant to N.J.S.A. 9:6-8.11.

Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).

See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).

Rewrote the section.

10:129A-2.3 Contacts during an investigation

(a) The Division representative shall, in conducting an investigation, interview the child subject of the report. 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, caregiver, temporary caregiver responsible for the child at the time of the incident, or institutional caregiver 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.

Amended by R.2000 d.394, effective October 2, 2000.

See: 32 N.J.R. 1362(a), 32 N.J.R. 3571(a).

In (b)1, substituted "caregiver" for "caretaker" throughout.

Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).

See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).

In (a), substituted "report" for "referral".

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, caregiver, temporary caregiver, institutional caregiver, 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, caregiver, temporary caregiver or institutional caregiver;

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.

Amended by R.2000 d.394, effective October 2, 2000.

See: 32 N.J.R. 1362(a), 32 N.J.R. 3571(a).

In (a)2 and (b)1, substituted "caregiver" for "caretaker" throughout.

10:129A-2.6 Law enforcement assistance

(a) The Division representative shall request appropriate assistance in conducting an investigation from the police 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 report 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.

Amended by R.1999 d.243, effective August 2, 1999.

See: 30 N.J.R. 3913(a), 31 N.J.R. 2211(b).

In (a), substituted a reference to the police for a reference to local and state law enforcement officials in the introductory paragraph. Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).

See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).

In (a), substituted "report" for "case" in 2.

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 caregiver of the child subject of the investigation, if the child will remain in the custody of the caregiver, 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 caregiver of the child would impede the investigation or litigation, the Division shall delay notifying the parent or caregiver 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 caregiver, temporary caregiver or institutional caregiver 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, caregiver, or 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.

Amended by R.1999 d.243, effective August 2, 1999.
See: 30 N.J.R. 3913(a), 31 N.J.R. 2211(b).

Substituted "or" for "and" following "caretaker."
Amended by R.2000 d.394, effective October 2, 2000.
See: 32 N.J.R. 1362(a), 32 N.J.R. 3571(a).

In (a), (c) and (d), substituted "caregiver" for "caretaker" throughout.

SUBCHAPTER 3. INFORMATION PROVIDED ABOUT THE INVESTIGATION AND FINDINGS

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

(a) The Division representative shall inform the alleged child victim in accordance with and appropriate to the child's age, condition, and capacity to understand and cope with the information and shall inform the child's parent or caregiver 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 report 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 caregiver 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 caregiver of any child alleged to be an abused or neglected child who is in the care of that temporary caregiver at the time of the investigation of the provisions of (a) above, when that information is necessary for the temporary caregiver to provide care for the child.

Administrative correction.

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

Amended by R.1999 d.243, effective August 2, 1999.

See: 30 N.J.R. 3913(a), 31 N.J.R. 2211(b).

In (a), substituted "and appropriate to the child's age, condition, and" for "the child's" following "accordance with" in the introductory paragraph.

Amended by R.2000 d.394, effective October 2, 2000.

See: 32 N.J.R. 1362(a), 32 N.J.R. 3571(a).

In (a), (b) and (d), substituted "caregiver" for "caretaker" throughout.

Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).

See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).

In (a), substituted "shall inform the alleged child victim in accordance" for "shall inform the child subject of an investigation in accordance" in the introductory paragraph and substituted "report" for "referral" in 1.

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

The Division representative shall, upon initial contact, inform each person specifically alleged to be a perpetrator of child abuse or neglect about 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, unless the police, prosecutor, or Deputy Attorney General advises the Division representative to delay providing the information, or in cases in which providing such information will jeopardize the investigation.

Amended by R.1999 d.243, effective August 2, 1999.
See: 30 N.J.R. 3913(a), 31 N.J.R. 2211(b).
Rewrote the section.

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 by a preponderance of the evidence 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, caregiver, temporary caregiver or institutional caregiver.

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; or

2. "Unfounded" when:

i. There is not a preponderance of evidence that the child was harmed or placed at substantial risk of harm; or

ii. There is not a preponderance of evidence indicating that a parent, caregiver, temporary caregiver, institutional caregiver or child was involved.

(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 for each report within 60 days of the Division's receipt of the report. If the Division is continuing efforts to confirm credible information, extensions may be granted by the office manager in increments of 30 days.

(d) The determination of investigation findings shall include a single determination for the report, indicating that the report is substantiated, when any allegation in that report has been substantiated, and that the report is unfounded, when no allegation has been substantiated.

Amended by R.2000 d.394, effective October 2, 2000.
See: 32 N.J.R. 1362(a), 32 N.J.R. 3571(a).

In (a), substituted "caregiver" for "caretaker" throughout.
Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).
See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).
Rewrote the section.

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 (f) below.

1. When a case is in litigation or a report is under criminal investigation, and the police, prosecutor or Deputy Attorney General has determined that notification of the investigation findings to persons in (c) through (f) 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 representative shall notify persons specified no later than 10 days from the date upon which the Division made a final determination of substantiated or unfounded.

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

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

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

3. He or she shall have an opportunity to dispute a finding of substantiated child abuse or neglect in accordance with N.J.A.C. 10:120A.

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

(e) The Division representative shall advise, upon completion of the investigation, the parent or caregiver 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 caregiver 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.

(f) Upon completion of the investigation, the Division representative shall advise each alleged child victim that the investigation has been completed, the finding of the investigation, and what efforts will be made to protect him or her from further harm and how such protection will occur. The Division representative shall give information in a manner determined by the Division representative to be consistent with and appropriate to the child's age, condition, and ability to understand the basis for the Division's involvement, the child's ability to cope with the information, and the child's ability to participate in the development, discussion or implementation of the case plan pursuant to N.J.S.A. 9:6-8.10a.c.

(g) The Division representative may, and, upon written request, the Division representative shall advise the referral source of the disposition of the investigation, pursuant to N.J.S.A. 9:6-8.10a.b.(18).

(h) Pursuant to N.J.S.A. 9:6-8.10a.e, within 10 days from the date upon which the Division representative makes a final determination of substantiated or unfounded, the Division shall forward to the police in whose jurisdiction the child victim resides written information regarding the report which shall include:

1. The name and age of each child victim and his or her address;
2. The names and ages of the child victim's siblings, if any, obtained by the Division during its investigation;
3. The name of each perpetrator, his or her address, and his or her relationship to each child victim;
4. If the incident occurred in an institution, the Division representative shall provide the name and address of the institution;
5. The date of the report to the Division;
6. The date the Division representative completed the Division's investigation of the report;

7. Whether the substantiated finding was child abuse, neglect or sexual abuse, or a combination thereof;

8. A summary of the circumstances of the incident, including a description of the child's injuries, if any, and a statement about the severity of the incident;

9. A statement as to whether the Division representative reported the incident to the county prosecutor; and

10. A statement as to whether the Division, the Office of the Public Defender, when acting as the Division's agent in conflict matters, or the Institutional Abuse Investigation Unit investigated a prior allegation of abuse or neglect regarding the child victim.

i. In the notification, the Division representative shall advise the police that the information provided must be kept confidential pursuant to N.J.S.A. 9:6-8.10a.e, whereby the police shall be prohibited from sharing the information with anyone except as authorized under the provisions of N.J.S.A. 9:6-8.10a.

ii. If an investigation finding of substantiated is later reversed by an appeal or a court order, and the Division representative had notified the police of the substantiated report under these rules, the Division representative shall advise the police, in writing, to destroy the information regarding the substantiated report.

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

Administrative correction.

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

Amended by R.1999 d.243, effective August 2, 1999.

See: 30 N.J.R. 3913(a), 31 N.J.R. 2211(b).

Rewrote (g) and (h); inserted a new (i); and recodified former (i) as (j).

Amended by R.2000 d.394, effective October 2, 2000.

See: 32 N.J.R. 1362(a), 32 N.J.R. 3571(a).

In (f), substituted "caregiver" for "caretaker" throughout.

Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).

See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).

Rewrote the section.

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).

SUBCHAPTER 4. EXPUNCTION OF RECORDS

10:129A-4.1 Expunction limited to a record that consists of an unfounded report; contents of record to be expunged

(a) The Division shall expunge a record relating to an unfounded investigation determination within the time

frames set forth in N.J.A.C. 10:129A-4.2, unless one of the exceptions listed in N.J.A.C. 10:129A-4.3 exists. A record scheduled for expunction shall be expunged in its entirety, including documentation of:

1. The identity of the alleged perpetrator, the alleged child victim, the child's parent, other members of the child's family or household, and the referral source;
2. Information gathered and documented during the screening of the report;
3. Information gathered during the Division's child protective service investigation and service assessment; and
4. The determination of findings.

(b) A record which contains a report that, upon investigation, resulted in a finding determination of substantiated shall not be expunged.

Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).

See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).

In (b), deleted "or not substantiated" following "substantiated"; substituted "report" for "referral" throughout.

10:129A-4.2 Time frames and start date

(a) Unless one of the exceptions listed in N.J.A.C. 10:129A-4.3 exists, the Division shall expunge a record which consists of an unfounded report three years after determining that the report was unfounded.

(b) The Division shall begin to expunge records under these rules on April 7, 2000, three years after the enactment of N.J.S.A. 9:6-8.40a as law. Records to be routinely expunged shall be limited to those which consist of reports that the Division determined were unfounded on or after the April 7, 1997 enactment of N.J.S.A. 9:6-8.40a.

(c) The Division shall not routinely expunge a record which consists of a report that the Division determined was unfounded prior to April 7, 1997.

1. An alleged perpetrator who seeks expunction of a record that consists of a report that the Division determined was unfounded prior to April 7, 1997, may make a request, in writing, to the Division of Youth and Family Services Closed Records Liaison, PO Box 717, Trenton, New Jersey 08625-0717. The Division's Closed Records Liaison shall make a determination on each request in accordance with the criteria contained in this subchapter, and shall advise the alleged perpetrator, in writing, as to whether the Division shall expunge or retain the record.

2. The expunction of any record which contains a report that the Division determined was unfounded prior to April 7, 1997 shall be limited to its computer file only.

(d) If, during the three years prior to expunction explained in (a) above, subsequent reports are received, and the Division determines that each subsequent report is likewise unfounded, the Division shall expunge the entire record, containing the original report and each subsequent report, three years after the date of the finding determination associated with the last report, unless one of the exceptions listed in N.J.A.C. 10:129A-4.3 exists.

Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).

See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).

Substituted "report" for "referral" throughout.

10:129A-4.3 When the Division retains rather than expunges a record

(a) The Division shall retain rather than expunge a record which contains a report that the Division determined was an unfounded report on or after April 7, 1997, when one or more of the following circumstances exist:

1. The Division is providing or begins to provide services to the child, a member of the child's family or household, or the alleged perpetrator at the time of the investigation or at any time during the three years prior to eligibility for expunction;

2. The Division receives a subsequent report regarding the child, a member of the child's family or household, or the alleged perpetrator during the three years prior to eligibility for expunction, and the finding of the subsequent report is substantiated;

3. The outcome of a child protective service investigation, a criminal investigation or a court proceeding involving the alleged perpetrator, the alleged child victim, or a member of the child's family or household is pending;

4. A court of competent jurisdiction orders the Division to retain the record; or

5. The Commissioner of the Department of Human Services requests that the Division retain the record.

Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).

See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).

Rewrote the section.

10:129A-4.4 Notification

When the Division provides notification of investigation findings in accordance with N.J.A.C. 10:129A-3.4 (d), (e), or (f), the notification shall include information about record expunction as set forth in this subchapter.

Amended by R.2005 d.44, effective January 18, 2005 (operative April 1, 2005).

See: 36 N.J.R. 4617(a), 37 N.J.R. 282(a).

Substituted "(d), (e), or (f)" for "(e), or (f) or (g)".