**10-148 DEPARTMENT OF HEALTH AND HUMAN SERVICES,**

 **OFFICE OF CHILD AND FAMILY SERVICES**

**Chapter 201: PROCEDURES FOR THE CHILD ABUSE OR NEGLECT FINDINGS, APPEALS FROM FINDINGS, AND APPEALS FROM DENIAL OF ACCESS TO CERTAIN CONFIDENTIAL RECORDS**

The Department of Health and Human Services adopts the following procedures governing the process for ‘substantiated’ and ‘indicated’ findings, appeals from such findings, and appeals from denied requests by a parent, legal guardian, custodian, or caretaker of a child for disclosure of certain confidential records.

**I. LEGAL BASIS; SUCCESSOR STATUTES AND AGENCIES**

 The Department adopts these rules pursuant to 22 M.R.S.A. §42(1). These rules are necessary for the successful operation of the *Child and Family Services and Child Protection Act*, 22 M.R.S.A. §4001 *et seq.* Specifically, these rules are necessary to the Department’s obligation to determine the degree of harm or threatened harm to each child in each case that comes to its attention, pursuant to 22 M.R.S.A. §4004(2)(C-1) and appeals from denial of access to confidential records under 22 M.R.S.A. §4008(7).

 Whenever an agency is referred to in these rules, the rules shall be construed to refer to any successor agency. A “successor agency” is one that has powers or responsibilities similar or identical to an agency named in these rules. Whenever any law is referred to in these rules, the rules shall be construed to refer to any amendments or re-codifications resulting in a similar or identical law.

**II. RELATIONSHIP TO OTHER PROCEEDINGS**

A. **Pending matters**

 1. If a person is or becomes a party (including as an intervenor) to any of the proceedings listed in paragraph 5, the appeal process in these rules shall be dismissed without prejudice. The order or notice dismissing the appeal process shall contain a statement that the person has 60 days after the conclusion of the other proceeding to request that the appeal process be reinstated, that the person may contact the Department or the Child Welfare Ombudsman for further information, that a favorable result in the other proceeding does not necessarily mean that the finding will be reversed, and that if the person is in doubt about the effect of the other proceeding, then the person should request a reinstatement of the appeal process pursuant to these rules. The notice shall give phone numbers and email addresses for the person to contact the Department and the Child Welfare Ombudsman.

 2. To preserve any right to an appeal after the conclusion of the other proceeding, the person must file a request for a paper review after receipt of the original notice, as provided in Section X, even if the person is a party to one of the proceedings listed in paragraph 5.

3. At the conclusion of the proceeding that caused the dismissal, the person will be entitled to have the appeal process reinstated, unless the Department is entitled to record the person as substantiated or indicated pursuant to paragraph B of this part.

4. In order to reinstate the process, the person must file a request for an appeal as provided in Section X within 60 days of the conclusion of the other proceeding, unless a “good cause” exception has been granted by the Department.

5. The proceedings that result in dismissal of the appeal process in these rules are the following:

a. Proceedings pursuant to *Maine Revised Statutes*, Title 22, chapter 1071 (child protective);

b. Any other civil proceeding in which there is a factual issue of whether or not the substantiated or indicated person subjected the child(ren) to abuse or neglect or of whether the substantiated or indicated person committed the conduct or omissions that created the circumstances of abuse or neglect;

c. Any proceeding similar to a and b above in another state or territory of the United States; or

d. Any criminal or juvenile proceeding in which the person is charged with conduct substantially similar to the conduct upon which the Department based its finding.

6. For purposes of this section, another proceeding “concludes” on the date following the last date on which any post-judgment motions may be filed pursuant to the *Maine Rules of Civil Procedure* or *Maine Rules of Criminal Procedure*, as the case may be, if no direct appeal is taken from the judgment. If a direct appeal is taken from the judgment, and if the judgment is affirmed on appeal, then the proceeding “concludes” on the date that the Law Court issues its mandate (usually two weeks after the decision is published). If a direct appeal is taken from the judgment, and the appeal results in the case being remanded to the trial court, then the proceeding “concludes” when the remand is resolved, namely on the date following the date that any post-judgment motions may be filed.

#  **B. Determinations based on findings from other proceedings**

#  1. If a court of competent jurisdiction specifically finds that a person has abused or neglected a child, or that a child is in circumstances of jeopardy with regard to the person, or a court of another state or United States territory makes a similar finding, the Department may record and report the person as substantiated for abuse or neglect of a child.

2. If an agency of another state (including political subdivisions of other states) determines that a person abused or neglected a child, or makes a similar finding, the Department may record and report the person as substantiated or indicated, depending on the severity found by the other agency, for abuse or neglect of a child, if the person had the opportunity for an administrative hearing on the finding by the other state’s agency.

3. If a person is convicted of a crime where the charges arose out of the same conduct or pattern of conduct as that upon which the Department based its finding, then the Department may record and report the person as substantiated for abuse or neglect of a child.

#  4. The Department must make a finding that a specific allegation of abuse or neglect was substantiated if the Department was a party to a case in which a court of competent jurisdiction found as a factual matter that the specific alleged conduct did occur. If the Department is a party to the case, and the court does not find that the child is in circumstances of jeopardy, the Department is not required to change its finding(s) that a person has abused or neglected a child.

#  **C. Simultaneous administrative proceedings**

# If a finding forms a basis for the Department’s action against any license or certificate that the substantiated or indicated person holds to operate a facility for children listed in *Maine Revised Statutes*, Title 22, sections 7801 or 8301-A, and if the substantiated or indicated person timely requests an administrative hearing on the Department’s action, then the administrative hearing on the finding may, in the discretion of the Chief Administrative Hearings Officer, be consolidated with the hearing on the Department’s action against the license or certificate to operate a facility for children.

**III. PROCESS FOR AGENCY FINDINGS**

 **A. Department policy to govern**

 Except as otherwise provided by statute or by these rules, the Department’s policy governs receipt of reports of abuse or neglect, investigation of those reports, assessment of the circumstances of any child and person responsible for a child, and determination to substantiate, indicate, or unsubstantiate allegations.

 During an appeal, the paper reviewer, hearing officer, or Commissioner, depending on the stage of the appeal, may consider any deficiencies of the Department’s investigation or assessment to determine if such deficiencies rendered untrustworthy any information upon which the Department relied, but the failure of the Department to comply with its policies for investigation or assessment is not cause for reversing a finding.

**B. Allowable findings**

 After an investigation or assessment, the Department may make one or more of the following findings:

 1. Unsubstantiated

 2. Indicated

 3. Substantiated

 More than one finding may be made. For example, the Department may determine that a person is “substantiated” for risk of physical abuse to a child but that the same person is “unsubstantiated” for risk of sexual abuse to a child.

**C. Further investigation or assessment**

 The closing of an investigation or assessment and making of a finding pursuant to paragraph B does not preclude the Department from further investigating or assessing the circumstances of the child, family, or substantiated or indicated person. If the Department obtains new information relating to the original circumstances, or if there is a change in circumstances, the Department may make a new determination pursuant to paragraph B.

**IV. ABUSE OR NEGLECT**

 **A. Definition**

 Abuse or neglect is defined in 22 M.R.S.A. §4002(1).

**B. Guidelines**

 In making or reviewing a substantiation or indication finding, the following guidelines apply:

1. Abuse or neglect means any set of circumstances that

(a) is caused by a person responsible for the child or from which a person responsible for the child has failed to protect the child, and

(b) has caused or may in the future cause a child to suffer any of the following types of harm:

(i) Physical harm (that is, physical injury, physical illness, or any physical condition that is contrary to the child’s good health);

(ii) Mental, emotional, or psychological harm or distress; or

(iii) Sexual abuse or exploitation.

2. There is abuse or neglect if there is threat of harm; it is not necessary that the child have already suffered the harm.

3. It is not necessary that the person responsible for the child be at any legal or moral fault, or that the person have committed a crime.

4. A person responsible for a child subjects the child to abuse or neglect either by taking some act (or course of action) that causes the harm or threat of harm to the child, or by failing to take some act (or course of action) to protect the child from the harm or threat of harm.

5. Abuse or neglect does not include the threats of harm that occur regularly in everyday life, such as the risk of serious injury always inherent in riding in a car, as long as the person responsible for the child takes all reasonable and all legally-required precautions to reduce the threat of harm, such as using proper seat belts and child restraints. A precaution may be reasonable and therefore necessary to avoid abuse or neglect even though it is not legally required.

6. Because the focus of the process is on the harm to the child and not blame of the person responsible for the child, any physical, cognitive or psychological limitations, or other special needs, of the person responsible for the child are not taken into account in determining whether the child is subject to abuse or neglect or what precautions are reasonable to protect a child from harm.

7. Any special needs of a child are to be taken into account in determining what is necessary to protect the child from harm. For example, a child who is prone to self-injurious behavior may require closer supervision than other children.

8. A person subjects a child to abuse or neglect when the person is the person responsible for the child, and has caused the harm or threat of harm, or has failed to protect the child from the harm or threat of harm. There is no limit to the number of people who may subject the same child to the same abuse or neglect. For example, if a parent leaves the child with a person whom the parent knows is a convicted or adjudicated sex offender, then both the sex offender and the parent have subjected the child to abuse or neglect, and both may be indicated or substantiated.

1. Abuse or neglect may be a discrete event, a set of continuing circumstances, or a pattern of events or circumstances.

10. A person responsible for a child does not subject a child to abuse or neglect or fail to protect a child from abuse or neglect if the person acts reasonably and responsibly given the totality of the circumstances directly related to the discrete event, set of continuing circumstances, or pattern of events or circumstances that threatened or caused harm and forms the basis of the indicated or substantiated decision.

11. A child shall not be considered to be abused or neglected solely because treatment is by spiritual means by an accredited practitioner of a recognized religious organization.

**C. Special rule regarding sex offenders**

 A child is presumed to be subject to abuse or neglect when the parent or person responsible for the child intentionally, knowingly, or recklessly allows, encourages, or fails to prevent contact between the child and a person who:

1. Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense;

 2. Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse;

3. Has been substantiated or indicated as a result of sexual abuse or exploitation of a minor.

 For purposes of this section, “intentionally,” “knowingly” and “recklessly” have the meanings given them by 17-A M.R.S.A. §35(1), 17-A M.R.S.A. §35(2), and 17-A M.R.S.A. §35(3)(A) & (B), respectively.

 The parent or person responsible for the child may produce evidence to rebut the presumption.

 This section shall not be construed to prevent a finding of abuse or neglect in other circumstances.

**D. Sources of Authority**

 In determining or reviewing whether a child was subjected to abuse or neglect, a Department employee (including a hearing officer) shall consider as authority any and all of the following:

1. Any relevant state statute, which may include statutes in the Maine Juvenile Code (a portion of Title 15 of the *Maine Revised Statutes*), Title 19-A of the *Maine Revised Statutes*, Title 22 of the *Maine Revised Statutes*, and any other statute that may be relevant;

2. Any relevant Maine Supreme Judicial Court opinion;

3. These rules;

4. The Department’s other promulgated rules; and

5. The Department’s unpromulgated policies, which shall be treated as persuasive, but not binding, authority.

 In the case of inconsistencies among any of the authorities listed above, the authorities shall be given the same weight and deference that they are given in courts.

## V. DEFINITIONS

 Any terms defined or used in *Maine Revised Statutes*, Title 22, section 4002, have the same meaning when used in these rules, except to the extent modified in these rules.

 For the purpose of these rules, the following terms have the following meanings:

 A. Administrative hearing means a hearing conducted in accordance with the Department of Health and Human Services Administrative Hearings Regulations and these rules, as such regulations and rules are amended from time to time.

 B. Appeal means the two-stage procedure described in these rules. The first stage is a paper review. The second stage is an administrative hearing.

 C. Appellant means a substantiated or indicated person who has begun the process of appealing the finding.

C-1. Collateral consequences means

1. loss of employment, or denial of a good faith application for employment in a position for which the applicant was qualified;

2. loss or denial of a license or benefits issued by any federal, state, or municipal government;

3. expulsion from or denial of admission to an educational program, or admission to an educational program where employers in that field are required to consult with the Department to determine whether employees have been substantiated for child abuse or neglect; or

4. deprivation of a life, liberty or property interest that is protected by the Due Process Clause under the Fourteenth Amendment to the United States Constitution or Article I, Section 6-A of the Maine Constitution.

 D. Department means the Maine Department of Health and Human Services.

 E. Finding means the Department’s conclusion that an individual is substantiated, indicated, or unsubstantiated for abuse or neglect of a child.

 F. Good cause means (1) failure of the appellant to actually receive notice of the finding, unless the appellant has moved and has not notified the Department of his or her new address after being informed of the obligation to do so, or (2) reasons beyond the control of the individual.

G. Hearing officer means an administrative hearing officer who has received specialized training in child abuse and neglect.

H. Indicated means a finding made by the Department that an individual or legal entity was a person responsible for a child who was subjected to abuse or neglect, that the abuse or neglect was of low to moderate severity, and that the individual or legal entity poses no further threat of harm to children for whom the person might be responsible through employment or volunteer activities.

I. Paper review means a review by a reviewer of all relevant Department records related to the finding and all relevant written information submitted by the appellant.

J. Person responsible for the child has the meaning given it in 22 M.R.S.A. §4002(9), with the following interpretation. A “person responsible for the child” is any person who has responsibility to supervise and protect a child from harm. Without limiting the generality of the definition or interpretation of the term, the following persons are deemed to be persons responsible for the child:

1. A parent, whether or not the parent has custody or primary physical residence of the child;

2. A step-parent, whether or not the parent to whom the step-parent is married has custody or primary physical residence of the child;

3. An adult “family or household member” of the child or a parent, as that term is defined in 19-A M.R.S.A. §4002;

4. Any person to whom a parent or other person responsible for a child expressly or impliedly gives temporary or permanent authority or responsibility for the care, supervision and control of the child, or the authority to discipline the child. This includes, but is not limited to,

 a. an adult babysitter, whether or not related to the child, whether or not paid, and regardless of the length of time the person is responsible for the child;

 b. a child care facility or a family child care provider; or

 c. an educational facility.

K. Privileged records means information in the Department’s records that the Department is not required to provide to an appellant because it is (a) information in the record that is confidential or privileged pursuant to State or Federal law; (b) information that the Department reasonably believes would increase the risk of harm to a child if provided to the appellant; or (c) information or documents created by the person conducting the Paper Review.

L. Receipt of notice means that a person is deemed to have received a notice or mailing that the Department sends to the person on the earliest of the following dates:

1. The date the person actually receives the notice or mailing, as evidenced by a signed return receipt for the mail;

2. The date the person refuses delivery of certified mail, or the date that the United States Postal Service returns the certified mail as unclaimed, as evidenced by a notation by the United States Postal Service on or accompanying the mail; or

3. The date that is three (3) calendar days after the date the Department mails the notice or mailing by ordinary first-class mail to the person’s last known address, if the United States Postal Service does not return the mail to the Department as undeliverable.

M. Relevant records means all records, relating to the substantiated or indicated person, from the file under which the finding is entered, and all exculpatory information known to the Department, whether or not that information is in the file under which the finding is entered. Relevant Records specifically excludes any documents created by the person conducting the Paper Review and excludes records of any communications between the person conducting the Paper Review and any other person within the Department, as such communications are for the purpose of quality assurance and program improvement.

N. Reviewer means an employee of the Department who is specially trained to review findings and who has not had knowledge of the case prior to the Paper Review.

O. Substantiated means an administrative finding made by the Department that an individual or legal entity was the person responsible for a child who was subjected to abuse or neglect where either (1) the abuse or neglect was of high severity or (2) the individual or legal entity poses a threat of harm to children for whom the individual or legal entity may become responsible through employment or volunteer activities.

P. Unsubstantiated means an administrative finding made by the Department that there is insufficient evidence to support the allegation that an individual or entity who was a person responsible for the child subjected that child to abuse or neglect.

#### VI. PUBLIC AVAILABILITY OF INFORMATION

 The applicable regulations may be examined online at: <http://www.maine.gov/sos/cec/rules/10/chaps10.htm> or requested from:

 Office of Child and Family Services

 Department of Health and Human Services

 2 Anthony Avenue

 Augusta, ME 04333

 Phone: (207) 624-7900

 FAX: (207) 287-6156

 TTY: 711

**VII. NOTIFICATION OF FINDING(S)**

 Within ten (10) business days of making a finding, the Department shall provide the affected person with written notice, readable at a sixth-grade level, sent by ordinary first-class mail and by certified mail, addressee only, return receipt requested, to the affected person’s last known address. If the affected person is not an individual, then the notice may be addressed to any office or place of operation of the substantiated entity or to any officer, director, trustee, member, manager, partner, clerk, or other general agent of the substantiated entity. The notice shall include the following information:

A. Whether the person has been substantiated, indicated, or unsubstantiated for abuse or neglect of a child or children, and, if the person is indicated or substantiated, the specific factual findings and a summary of the evidence that is the basis for the findings.

B. If the person is substantiated or indicated, that the names of substantiated and indicated persons are maintained by the Department.

C. If the person is substantiated or indicated, that the person may be at risk of collateral consequences as a result of the finding.

C-1. If the person is indicated or substantiated, that the person has a right to appeal the decision.

D. That the first stage of an appeal is a paper review, and that neither the appellant nor the appellant’s attorney or authorized representative is entitled to be present during the paper review, but that the appellant may provide written information in support of his or her paper review, including written statements by adults (written statements by children are prohibited).

E. If the paper review upholds the finding, the appellant may request an administrative hearing at which he or she may present evidence in support of his or her objections to the finding, may be represented by an attorney or other representative legally authorized to represent appellant, may call witnesses, and may cross-examine state witnesses. Further details about the administrative hearing are in section XI.

F. That a paper review must be requested in writing within thirty (30) calendar days of the time the person receives the Department’s notice of its finding; that failure to timely appeal may result in the appellant’s name forever remaining in the Department’s records (certain Department records are expunged pursuant to 22 MRSA §4008(5)) and may result in a waiver of the right to appeal; that the finding may be disclosed to employers in certain fields (such as child care or education); and that the finding may affect the person’s ability to obtain certain licenses (such as foster care licenses).

G. If the person is substantiated or indicated, that the person may be eligible to receive no cost legal assistance from Pine Tree Legal Assistance or other legal service agencies, along with the names, addresses and telephone numbers of legal service agencies that have communicated to the Department that they are willing to assist appellants at no cost.

Where any term in paragraphs A through G above is defined in section V above, the notice to the person shall define the term in language suited for a person with a sixth-grade education.

The letter notifying the person of the substantiation or indicationshall comply with the requirements of Title VI of the *Civil Rights Act of 1964*, and with the *Americans with* *Disabilities Act of 1990*.

#### VIII. APPEALS

 Substantiated and indicated persons shall have the following rights to review of a finding.

A. A paper review shall be available to a substantiated or indicated person who submits a written request as required by these rules.

B. If the finding is upheld in the paper review then an administrative hearing shall be available to any substantiated person or entity, and any indicated person or entity who, in the determination of the Chief Administrative Hearing Officer, has proven that they have experienced or are likely to experience collateral consequences as a result of the indicated finding.

## IX. TIME FOR APPEAL

1. A substantiated or indicated person must appeal the decision within thirty (30) calendar days of the date the person receives the Department’s notice of the finding. A substantiated or indicated person may appeal the determination more than thirty (30) days after receiving the Department’s notice only if the person can show good cause for not appealing within thirty days, except that, even with good cause, an individual must always appeal within ninety days of the date the Department mails the notice to the individual.

B. Except as provided in section XIV below, a substantiated or indicated person who fails to appeal within the time provided in this section forfeits all rights to appeal the decision forever.

C. The time for requesting an administrative hearing after a paper review is covered in the procedures for requesting an administrative hearing, below.

D. When this rule requires a request for appeal to be made within a specific amount of time, it means that the Department must receive the request within that amount of time, with an exception for documented good cause. The failure of the Department to receive, for any reason, a request for appeal that an appellant sends to the Department shall not extend the time for taking an appeal. If an appellant wishes to ensure that the request is timely received, the appellant may send the request by certified mail, return receipt requested, may deliver the request personally, or may send the request by any other method that ensures that the Department receives it timely.

##### X. PROCEDURES FOR PAPER REVIEW

The following procedures apply to a paper review of a substantiation or indication finding:

A. An appellant shall appeal by sending a written and printed request for a paper review to the following address:

 Finding Reviews

 Office of Child and Family Services

 Department of Health and Human Services

 11 State House Station

 Augusta ME 04333-0011

 The written request may be personally delivered, or sent by USPS, FedEx, UPS, or other delivery service, to the Department at 2 Anthony Avenue, Augusta, Maine 04333. In that case, the envelope containing the request should be addressed to Finding Reviews, Office of Child and Family Services.

The writing shall be taken as a written request for a paper review if it in any manner objects to the substantiation or indication finding or requests any type of review of the substantiation or indication finding.

There is no email address for receipt of appeal requests and requests made by email shall be invalid. However, the Department shall have the discretion to provide an email address and accept a request for appeal by email if the Department chooses to do so as a courtesy or accommodation.

B. Within thirty (30) calendar days of its receipt of a request for a paper review from an appellant, the Department shall:

 1. Determine whether the appeal is timely pursuant to Section IX (either within the original time for appeal or within the extended time with good cause); and

 2. If the Department determines that the appeal is untimely, notify the appellant of that determination. If the Department determines that the appeal is untimely, the appellant may make a written request for a review by the Office of Administrative Hearings, addressed to the address in paragraph A, above. The appellant may send with the request for review any documentation in support of the appellant’s position that the appeal was timely, and may send a written argument. The Office of Administrative Hearings shall review the Department’s record and the materials submitted by the appellant, and shall determine whether the request is timely. If the Office of Administrative Hearings determines that the request is timely, then the paper review shall continue as provided in paragraph C below, except that the appellant shall have thirty (30) calendar days from the date of the Office of Administrative Hearing’s determination that the appeal was timely to submit the written information in support of his or her appeal.

C. The appellant shall have thirty (30) calendar days from the date the Department receives the appellant’s request for a paper review to submit to the Department written information in support of his or her appeal. The written information may include statements from other adults or argument.

D. If the request for a paper review is timely, the Department shall conduct the paper review within ninety (90) calendar days after the date it receives the request for a paper review.

E. The reviewer shall make his or her decision based solely upon the Department’s record and any additional information that the appellant submits. If the reviewer relies on information in the Department’s record that the Department obtained after notifying the appellant of the finding, then the reviewer shall notify the appellant of the substance of the information and shall give the appellant at least ten (10) days in which to provide a written response before the reviewer makes a final decision.

F. The reviewer shall determine by a preponderance of the evidence whether the information in the record, taken as a whole, is sufficient to support the finding that the appellant was the person responsible for a child who was subject to abuse or neglect. The reviewer shall have the authority to overturn or sustain the finding. The reviewer shall also have the authority to lower a substantiated finding to an indicated finding.

G. Within ten (10) business days of completing the review, the reviewer shall notify the appellant, by U.S. first-class mail, of the decision.

 1. If the finding is upheld, the notice, readable at a sixth grade level, shall include the following information:

 a. That the appellant is entitled to request an administrative hearing by writing to the address above for Findings Reviews at the Office of Child and Family Services within thirty (30) calendar days after the appellant is deemed, under these rules, to have received the notice of the result of the paper review. The notice shall explain that the administrative hearing will be conducted by a hearing officer of the Department in accordance with the Department of Health and Human Services Administrative Hearings Regulations and these rules, as such regulations and rules are amended from time to time. The notice shall explain that an indicated individual requesting an administrative hearing on the indicated finding must allege specific collateral consequences that they have experienced or are likely to experience as a result of the indicated finding. The notice shall also explain that the appellant may obtain a copy of all non-privileged relevant records prior to the hearing upon request, with directions on how to obtain those records. The notice will also explain that the appellant will have the right at the hearing to provide written evidence, so long as the appellant supplies the written evidence to the Department’s representative at least 10 days before the hearing; theappellant may present adult witnesses, cross-examine the Department’s witnesses, speak directly to the hearing officer, and be represented by a lawyer or other legally-authorized person of the appellant’s choice.

 b. That if an appellant does not request an appeal within thirty (30) calendar days, or within sixty (60) days if there is good cause, the finding shall be recorded permanently unless later overturned pursuant to these rules.

 c. That the names of substantiated and indicated persons are maintained in a database and that a substantiated or indicated person may be at risk of collateral consequences.

 d. If the person is substantiated or indicated, that the person may be eligible to receive no cost legal assistance from Pine Tree Legal Assistance or other legal service agencies, along with the names, addresses, and telephone numbers of legal service agencies that have communicated to the Department that they are willing to assist appellants at no cost

The letter notifying the appellant of the result of the paper review shall comply with Title VI of the *Civil Rights Act of 1964* and with the *Americans with Disabilities Act of 1990*.

**XI. ADMINISTRATIVE HEARING PROCEDURES**

 Except as otherwise provided in these rules, the administrative hearing shall be conducted pursuant to the procedures for Orders of Reference in the Department’s Division of Administrative Hearings Regulations, as amended from time to time. The Order of Reference shall state as the issue for hearing when the finding is substantiated, “Was the Department correct when it found that (name) subjected the child and/or children named in the substantiation letter of (date) to abuse or neglect or failed to protect the child and/or children from abuse or neglect; and if it is found that abuse or neglect occurred, should (name) be substantiated or indicated based on the severity of the abuse or neglect?” The Order of Reference shall state as the issue for hearing when the finding is indicated, “Was the Department correct when it found that (name) should be indicated for abuse or neglect as detailed in the Notice of Indicated Finding and Right to Appeal of (date)?” The following rules apply to an administrative hearing of a decision to substantiate or indicate a person for child abuse and/or neglect:

1. An appellant whose paper review affirms the substantiation finding shall be entitled to an administrative hearing. An appellant whose paper review affirms an indicated finding shall be entitled to an administrative hearing if the Chief Administrative Hearing Officer determines that the appellant has suffered or is likely to suffer collateral consequences as a result of the indicated finding. The appellant must request an administrative hearing in writing. That written request for a hearing must be delivered to the within thirty (30) calendar days after the date the appellant is deemed under these rules to have received notice of the results of the paper review. However, upon a showing of good cause, the Department will accept a written request for a hearing that is delivered within 60 days of the date the appellant is deemed under these rules to have received notice of the results of the paper review.
2. There is no email address for receipt of appeal requests and requests made by email shall not be valid. However, the Department shall have the discretion to provide an email address to accept a request for appeal by email if the Department chooses to do so as a courtesy or accommodation.

C. If the appellant believes that the appellant has or is likely to suffer imminent collateral consequences as a result of the finding, and if the appellant wants the Chief Administrative Hearing Officer to prioritize the matter for hearing under paragraph F below, the appellant may submit with the request for hearing a statement describing the collateral consequences. The request and any statement describing collateral consequences shall be in writing addressed to the same address as for requests for paper reviews.

D. The Division of Administrative Hearings will review all requests for hearings. In the case of requests for an administrative hearing on an indicated finding the Chief Administrative Hearing Officer will make a determination as to whether or not the appellant has experienced or is likely to experience collateral consequences as a result of the indicated finding. If the Chief Administrative Hearing Officer determines the appellant has experienced or is likely to experience collateral consequences, then the Division of Administrative Hearings will schedule a hearing pursuant to these rules. If the Chief Administrative Hearing Officer determines that the appellant has not experienced or is not likely to experience collateral consequences, then the Division of Administrative Hearings will deny the appellants request for a hearing on the indicated finding. This denial shall be considered final agency action on the indicated finding.

E. The Division of Administrative Hearings will schedule a hearing, pursuant to its rules, for a timely request for a hearing on a substantiated finding. If the office that issued the finding believes that the request for hearing was not timely or that there is another reason why the appellant is not entitled to a hearing, it may request that the Chief Administrative Hearing Officer dismiss the matter or that a hearing not be held. A copy of the office’s request to dismiss the matter will be provided to the appellant.

F. Notwithstanding any provision of the Department’s Administrative Hearing Regulations, the Department need not provide to the appellant any records that are privileged records (as that term is defined in these rules), except that the Department shall allow the Appellant to examine any records that it intends to introduce into evidence at the hearing.

G. The administrative hearing shall be conducted by an independent hearing officer of the Department of Health and Human Services.

H. If the Chief Administrative Hearing Officer determines that there are too many pending requests for administrative hearings for the Division of Administrative Hearings to handle all of them timely, then the Chief Administrative Hearing Officer may prioritize the pending cases for hearing. In determining the priority of cases, the Chief Administrative Hearing Officer shall give priority to any case in which the record and any statement of collateral consequences by the appellant shows that the appellant has or is likely to suffer imminent collateral consequences as a result of the finding.

I. The Department’s administrative hearings shall be conducted in accordance with the agency’s “Administrative Hearing Regulations”, 10-144, Chapter 1, found online at <https://www.maine.gov/sos/cec/rules/10/144/144c001.doc> , with the following exceptions:

1. Departmental employees may submit their direct testimony in writing, as long as they do so at least ten (10) calendar days prior to the hearing, unless the parties agree to a shorter time. The Department shall send a copy of the pre-filed testimony to the appellant at the same time that it submits it to the Office of Administrative Hearings. Employees who have pre-filed their direct testimony may only be compelled to attend the hearing for purposes of cross-examination. The hearing officer shall take into account the other responsibilities of the Department’s employees when scheduling the time and manner of their attendance. When necessary to accommodate their schedules, such employees may attend by video or telephone, if available. A caseworker or supervisor who has relevant information shall attend the hearing (in person, by video or by telephone) upon the request of the appellant made to the hearing officer at least 10 days prior to the hearing.

2. Oral or written evidence of statements of any child are admissible without the testimony of the child, except that statements written by a child, made for purposes of the appeal, are not admissible. The hearing officer may rely on a child’s statement to the extent of its probative value. The hearing officer shall not draw any negative inference from a party’s inability to cross-examine the child about the child’s statements.

3. Only adult witnesses may be permitted to testify at the hearing, except that if the appellant is a child, the appellant may testify.

4. The provisions of *Maine Revised Statutes*, Title 22, section 4015, relating to the abrogation of privileges, apply to administrative hearings to the same extent that they apply to child protective proceedings.

5. If the appellant refuses or fails to execute requested releases of any confidential information, including but not limited to substance abuse treatment records, for use in the assessment, investigation or hearing, the hearing officer shall conclude that any relevant findings made by the Department that could be supported by the withheld confidential information are supported by that information. This paragraph applies only if the Department has provided the appellant with written notice of these consequences of failure to execute releases.

6. The appellant shall provide any documents or other exhibits that the appellant intends to introduce into evidence at the hearing to the Department representative handling the hearing at least seven (7) calendar days before the hearing, or earlier pursuant to any order from the Office of Administrative Hearings

7. The person who conducts the paper review of the finding may not testify at the hearing for any party.

8. Evidence relevant to the finding that is discovered after the finding is made shall be admitted, provided that the party intending to present such evidence has given notice to the other parties about the evidence at least seven (7) days prior to hearing.

J. At the hearing, the Department shall bear the burden of persuasion. The hearing officer shall determine by a preponderance of the evidence whether the evidence presented at the hearing, taken as a whole, is sufficient to support the allegation that the appellant subjected the child to abuse or neglect as of the time of the substantiation or indication.

K. The hearing officer shall make a recommendation to the Commissioner (pursuant to the Department’s Administrative Hearings Regulations governing Orders of Reference) to take one of the following actions on the determination of abuse or neglect:

 1. overturn it;

 2. sustain it; or

 3. in the case of a substantiated finding, lower it to an indicated finding. When the hearing offer recommends to the Commissioner that a substantiated finding be lowered to an indicated finding, if that recommendation is adopted by the Commissioner, the appellant is not permitted any additional appeal rights under these rules related to the indicated finding.

L. Notwithstanding the rules of the Office of Administrative Hearings, an appellant’s representative must be an attorney or, to the extent that Maine law allows a non-attorney to represent a party at an administrative hearing, a person who would be eligible to receive information and records from the Department pursuant to 22 M.R.S.A. §4008. If the representative is a non-attorney employee of a legal services firm or agency, if the representation is permitted by law, then the representative must be supervised by an attorney, who must file with the Office of Administrative Hearings a letter or certification that the attorney is personally supervising the representative in the appeal.

 The representative may not be a person who was involved in the circumstances that led to the finding. The representative may not testify at the hearing or be the author of any documentary evidence.

**XII. RELEASE OF INFORMATION BY THE DEPARTMENT**

A. The Department will use reasonable efforts to respond to inquiries from persons who have reason to believe that they may be named as substantiated or indicated in child abuse or neglect case records. The Department shall develop an appropriate form for use by persons who wish to make such a request. The Department shall not use a person’s request for any purpose other than to process that request. The Department may discontinue responding to these requests if it becomes unduly burdensome or if it interferes with the Department’s responsibilities to provide reviews under these rules to persons who are substantiated or indicated after the effective date of these rules.

B. If the Department releases any information regarding a substantiation or indication to any person outside of the Department or the Office of the Attorney General, and excepting any information provided pursuant to a subpoena or court order or a specific release from the person against whom the finding was made (1) while an appeal is pending under this rule, (2) before the expiration of the appeal period provided for in these rules, or (3) after an appeal has been dismissed without prejudice pursuant to Section II.A. and the other proceeding that caused the dismissal is still pending, then the Department shall include with the information provided a statement that the finding may be subject to administrative review by the Department at the appellant’s request.

1. If a person is indicated and not substantiated, the Department shall respond to any request for a check of child protective history relating to that person by stating that the person has not been substantiated for abuse or neglect, and shall give no further information unless otherwise required by law.

**XIII. SUBSTANTIATED OR INDICATED MINORS**

 Notwithstanding any other provision of these rules, a minor who has been indicated or substantiated for abuse or neglect of a child or children may pursue any procedure under these rules not previously pursued on his or her behalf any time before the minor reaches the age of 25.

#### XIV. EFFECTIVE DATES; FINDINGS MADE BEFORE FIRST EFFECTIVE DATE

1. These rules are effective February 28, 2022 and apply to all findings made after that date.
2. Any person who was substantiated before November 1, 2003 may request a paper review if the person was never previously afforded notice of the opportunity for a paper review. Any person who was substantiated before November 1, 2003 may request an administrative hearing if the substantiation was upheld after a paper review and the person was never previously afforded notice of the opportunity for an administrative hearing.
3. Any person who was indicated prior to February 28, 2022, who was notified of and availed themselves of a paper review, and is now suffering collateral consequences from the indicated finding, may present a letter to the Chief Administrative Hearing Officer requesting an administrative hearing as described in these rules at Section XI(D). Requests for administrative hearings based on collateral consequences must be made within 60 days of the date the person knew or should have known about the collateral consequences from the indicated finding.

**XV. RECONSIDERATION OF FINDING**

Subject to specific conditions that follow, an appellant may request reconsideration of a substantiation or indication. The procedures and permitted outcomes are set forth below.

 **Note:** This section does not apply to Out-of-Home Investigations. This section also does not apply to a substantiated or indicated finding that was upheld after an appeal to the Maine Superior Court or the Maine Law Court.

 Reconsideration is available only if the finding satisfies one of the conditions in section A, and all of the conditions in section B, below:

1. **Reconsideration is Available Only if the Appellant Proves One of the Following:**
	1. **Lack of Notice**: The substantiation was made after November 1, 2003 or the indication was made after February 28. 2022, the appellant proves that he or she did not receive notice of the finding, the evidence is stale, and the Department’s review of its own record suggests reconsideration is appropriate due to risk remediation or change in law or policy per subsections 3 and 4 herein; or
	2. **Jeopardy Not Reached**: The finding was ineligible for appeal because of a proceeding in District Court and no finding of jeopardy was made prior to the court dismissing the case; or
	3. **Risk Remediated**: After the finding was made, the appellant successfully engaged with prevention and intervention services, such that there was no filing of a petition for child protection order in court, and the Department closed its case because the appellant remediated the risks originally identified; or
	4. **Substantial Change in Law or Policy**: After the finding was made, there was a substantial change in an area of law or the Department’s policy, and the finding would not have been made by the Department, had the assessment taken place under the current law or policy; or
	5. **Extraordinary Cases Post-Adoption**: The finding pertained to a child with special needs re-entering the Department’s custody post-adoption, in order to ensure the safety of family members in the home.
2. **In Addition, Reconsideration is Limited to Those Cases in Which All of the Following Conditions are Satisfied:**
	1. **Collateral Consequences**: The appellant is experiencing collateral consequences as defined in these rules; and
	2. **Three Years Have Passed**: Reconsideration may be requested no sooner than three (3) years after the date of the appellant’s receipt of notice of the finding.
3. **Limit of One Opportunity**: An appellant shall have no more than one opportunity to obtain a review under this section for each finding. In cases with multiple findings the Department may, in its discretion, consolidate the review process.
4. **Standard and Burden of Proof**: The appellant seeking reconsideration has the burden of proving the required facts by clear and convincing evidence.
5. **Manner of Review**: Reconsideration shall consist of a paper review as defined in these rules. The decision of the reviewer, as approved by that reviewer’s supervisor, is final. The appellant is not eligible for an administrative hearing if the finding is upheld at the paper review.
6. **Permitted Outcomes**: If the appellant satisfies his or her burden of proof under this section, the Department shall make a new record of the matter as a reconsidered finding. The Department’s record shall show one of the following:
	1. The finding was reconsidered and overturned because the finding was made after November 1, 2003, the appellant did not receive notice of the finding, the evidence is stale, and the Department’s review of its own record suggests reconsideration is appropriate due to risk remediation or change in law or policy; or
	2. The finding was reconsidered and overturned because the appellant has made demonstrable changes so that he or she no longer poses a threat of abuse or neglect to any child; or
	3. The finding was reconsidered and overturned due to substantial change in law or the Department’s policy, and the finding would not have been made had the assessment taken place under the current law or policy; or
	4. The finding was reconsidered and overturned due to a child with special needs re-entering the Department’s custody post-adoption, in order to ensure the safety of family members in the home; and the appellant does not present a threat of abuse or neglect to any child.
7. **Child Protection History Checks**: When a finding was reconsidered and overturned, the Department will not disclose information about the finding (unless such disclosure is specifically requested for a purpose benefitting the appellant and the Department receives a release signed by the appellant or such disclosure is required by court order).

**XVI. SUBSTANTIVE RULES FOR THE APPEAL FROM DENIAL OF ACCESS TO CONFIDENTIAL RECORDS**

 If a parent, legal guardian, custodian, or caretaker of a child requests disclosure of information about the child contained in the Department’s record under 22 M.R.S.A. §4008(2) and the Department denies the request, the parent, legal guardian, custodian, or caretaker has the right to appeal the denial pursuant to 22 M.R.S.A. §4008(7). In such cases the parent, legal guardian, custodian, or caretaker is the appellant.

* 1. **Paper Review**
		1. **Time Limit for Appeal**: An appellant must send a written request for a paper review of the denial no later than thirty (30) calendar days after the appellant’s receipt of notice that access to the records has been denied. The request must be submitted to the following address:

 Finding Reviews

 Department of Health and Human Services

 11 State House Station

 Augusta, ME 04333-011

* + 1. **Time Within Which the Department Must Acknowledge Request for Paper Review**: If an appellant requests a paper review the Department shall send a written acknowledgment within fourteen (14) business days.
		2. **Time Within Which the Department Must Conduct Paper Review**: The Department shall complete the paper review with ninety (90) calendar days after mailing the acknowledgment described in the foregoing paragraph.
		3. **Time Within which the Department Must Notify Appellant of Paper Review Decision**: The Department shall mail written notice of the outcome of the paper review to the appellant within fourteen (14) business days after completing the paper review. If the Department upholds the decision to deny access to the records, the appellant must submit a written request for an administrative hearing no more than thirty (30) calendar days after the appellant’s receipt of notice that the Department’s decision has been upheld after paper review.
		4. **Issue to be decided**: The issues to be decided are limited to whether the nondisclosure of some or all of the information requested is necessary to protect the child or any other person.
		5. **Standard of Review**: The standard of review is whether a preponderance of the evidence supports the Department’s decision that nondisclosure of some or all of the information requested is necessary to protect the child or any other person.
	1. **Administrative Hearing**
		1. **Order of Reference Required**: An Order of Reference shall issue in each case. The Order of Reference shall state the issue for hearing as follows: “Whether, in accordance with 22 M.R.S.A. §4008(7) the Department determined that [Appellant] is the parent, legal guardian, custodian, or caretaker of the child; and the nondisclosure of information requested is necessary to protect the child or any other person.”
		2. **Separate Hearing Regulations**: The Department’s administrative hearings shall be conducted in accordance with the agency’s “Administrative Hearing Regulations”, 10-144, Chapter 1, found online at

<https://www.maine.gov/sos/cec/rules/10/144/144c001.doc> , subject to the exceptions and supplemental provisions herein.

* + 1. **Exceptions and Supplemental Substantive Rules for Conducting Administrative Hearings**
			1. At the hearing, the Department shall bear the burden of persuasion.
			2. Only adult witnesses may testify.
			3. The hearing officer may admit and consider oral or written evidence of statements made by any child that are offered by an adult witness. The hearing officer may rely on such evidence to the extent of its probative value. The only exception is that the hearing officer may not admit statements by a child that were made solely for the purpose of the administrative hearing.
			4. The Department employee(s) who conducted the paper review may not testify at the hearing.
			5. After the hearing has been conducted, the hearing officer may examine the records which were the subject of the hearing *in camera,* without disclosure to the parties. The hearing officer’s examination of the records may be used to inform his or her decision.
			6. Privileges are abrogated in administrative hearings in the same manner as child protection court proceedings under 22 M.R.S.A. §4015.
			7. The Maine Rules of Evidence are not strictly followed in administrative hearings. Generally, evidence shall be admitted if it is relevant and is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Evidence which is irrelevant or unduly repetitious may be excluded.
		2. **Decision**: If the Department upholds the decision to deny access to the records, the Department’s decision must inform the requester that the requester may file a petition for judicial review of the decision within thirty (30) days of the date of the decision. The Department shall send a copy of the decision to the requestor by regular mail to the requestor’s most recent address of record.

**XVII TIME LIMITS**

1. When these rules establish any time limit for the filing, submission, or production of any document, record, or other possible source of evidence, or for the filing of any appeal or submission, such item must be received before the close of business on the last day of the time limit.
2. In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal state or federal holiday, in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal state or federal holiday.

STATUTORY AUTHORITY:

 22 MRS §§ 42, 4008(7), 5601-5610; PL 2015 c. 501

EFFECTIVE DATE:

 November 1, 2003 - filing 2003-385 entitled “Appeal Procedures for Persons Substantiated as Perpetrators of Abuse or Neglect of Children” - EMERGENCY, expires January 29, 2004

EFFECTIVE DATE:

 February 3, 2004 - filing 2004-32

REPEALED AND REPLACED:

 October 1, 2008 - filing 2008-451 entitled “Procedures for the Abuse or Neglect Substantiation Process and for Appeals for Persons Substantiated as Perpetrators of Abuse or Neglect of Children”

AMENDED:

 May 15, 2017 - filing 2017-072 entitled “Procedures for the Abuse or Neglect Substantiation Process, for Appeals for Persons Substantiated as Perpetrators of Abuse or Neglect of Children, and Appeals for Denial of Access to Confidential Records”

AMENDED

 February 28, 2022 filing 2022-030 entitled “Procedures for the Child Abuse or Neglect Findings, Appeals from Findings, and Appeals from Denial of Access to Certain Confidential Records”