

**CHAPTER 407
DEPARTMENT OF HUMAN SERVICES**

**DIVISION 45
OFFICE OF INVESTIGATIONS AND TRAINING**

**Notice and Review of Substantiated Abuse or Neglect in 24-Hour Residential Care for Children
with Developmental Disabilities**

407-045-0600

Purpose and Statutory Authority

- (1) Purpose. The purpose of these rules is to state procedures for ensuring the rights of individuals to have notice and to request a review to appeal a determination when an abuse or neglect investigation in a 24-hour residential care facility for children with developmental disabilities results in a “substantiated” determination. These rules outline a process to provide review, upon request, by the Office of Developmental Disability Services Review Committee (ODDSRC) of the Mental Health and Developmental Disability Services Division (MHDDSD) of the Department of Human Services. The ODDSRC has the authority to change the determination made in the investigation by the Office of Investigations and Training (OIT).
- (2) Statutory Authority. These rules are authorized by ORS 430.041 and carry out the provisions of the Federal Child Abuse Prevention and Treatment Act (CAPTA) which requires child protective service agencies to provide notice to individuals identified as responsible for child abuse or neglect and to provide individuals with an opportunity to request and have a review to appeal a “substantiated” determination.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0100, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0610

Definitions

For the purposes of these rules, the following words and phrases have these meanings:

- (1) “24-Hour Program” means a residential program licensed by the Office of Developmental Disability Services (ODDS) in the Mental Health and Developmental Disability Services Division (MHDDSD) under the 24-hour rule and contracted by MHDDSD to serve children under the age of 18 who have developmental disabilities.

- (2) “Legal Finding” means a Court finding, guilty plea or guilty verdict which identifies that the person inquiring about or requesting a review was responsible for the child abuse or neglect or any other offense stemming from the employee's or subcontracting individual's conduct which was the subject of the OIT substantiated determination.
- (3) “Notice of Office of Developmental Disability Review Committee Decision” means a written notice of the decision of the ODDSRC. This notice is delivered to the agency or program employee or subcontracting individual identified as responsible for the child abuse or neglect.
- (4) “Notice of OIT Substantiated Determination” means that OIT determined at the conclusion of an investigation of alleged child abuse or neglect that there is reasonable cause to believe child abuse or neglect occurred; and, when known, that there is reasonable cause to believe that a specific person or persons employed by the 24-hour residential program or subcontracting with that program were responsible for the child abuse or neglect.
- (5) “Notice of Waived Rights for Review” means a written notice that OIT staff may send to a person requesting a review, when OIT has documentation that a person refused to accept delivery of the notice of OIT substantiated determination or that the person accepted the delivery and did not request a review within 30 calendar days, or when there is a legal determination which indicates that the perpetrator was responsible for the subject child abuse or neglect.
- (6) “Office of Developmental Disability Services Review Committee” or “ODDSRC” means a group of three MHDDSD employees selected by the ODDS Assistant Administrator or a designee, none of whom were involved in the investigation that resulted in the specific OIT substantiated determination under review.
- (7) “OIT” means the Office of Investigations and Training of the Mental Health and Developmental Disability Services Division, which performs investigations of alleged child abuse or neglect where the alleged victim has developmental disabilities and lives in an ODDS licensed 24-hour residential program and the perpetrator is an employee or subcontracting individual of that program.
- (8) “OIT Determination” is a finding that completes an OIT investigation. Determinations are defined in OAR 309-045-0160 and summarized as follows:
 - (a) “Substantiated” means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse or neglect definitions occurred and such conduct is attributable to the person(s) alleged to have engaged in the conduct.

- (b) “Unsubstantiated” means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse and/or attributable to the person(s) alleged to have engaged in such conduct.
 - (c) “Inconclusive” means that the matter is not resolved and the available evidence does not support a final decision that there was reasonable cause to believe that abuse or neglect occurred or did not occur.
- (9) “Perpetrator” means an individual employee or subcontracting individual identified by OIT as responsible for child abuse or neglect in an OIT substantiated determination.
 - (10) “Person Requesting Review” or “Requestor” means an individual who is identified as the perpetrator in an OIT substantiated determination and who requests a review of the determination because the individual believes the determination is in error.
 - (11) “Request for Review by Office of Development Disability Review Committee” means a written request from a person requesting review. The specific requirements for a request for review are described in OAR 309-045-0170.
 - (12) “Retain a Request for Review” means an ODDS manager or designee determines a request for review will be held until a court legal finding is made. More specific details are described in OAR 309-045-0180.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0110, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0620

MHDDSD Employee -- Application of MHDDSD Employee Policies

When the individual identified as responsible for substantiated child abuse or neglect is an employee of MHDDSD, the Division will refer to MHDDSD employee policies for additional and/or different requirements.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0120, DHSD 9-2007, f. & cert. ef. 10-1-07

407-045-0630

Providing Notice of an OIT Substantiated Determination On/After the Effective Date of These Rules (October 26, 2000)

When staff of the Office of Investigations and Training (OIT) determines a person is responsible for substantiated abuse or neglect, on or after the effective date of this rule (October 26, 2000), OIT shall deliver a notice of substantiated determination to the person identified in one of the following ways:

- (1) By certified mail, restricted delivery, with a return receipt requested to the last known address; or
- (2) By hand delivery; hand-delivered notice must be addressed to the individual, the original is to be signed and dated by the individual to whom it is addressed to acknowledge receipt, and signed by the person delivering the notice. OIT staff shall place the document with original signatures in the case record.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0130, DHS 9-2007, f. & cert. ef. 10-1-07

407-045-0640

Inquiry About a Review of an OIT Substantiated Determination When a Person Believes They Have Not Received a Notice

If a person believes they have not received a notice of OIT substantiated determination, the person may contact OIT to inquire about a review of the determination. OIT will follow the procedures outlined in OAR 309-045-0150 to determine if a review of a determination may be requested.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0140, DHS 9-2007, f. & cert. ef. 10-1-07

407-045-0650

OIT Responsibilities When a Person Inquires About a Review of an OIT Substantiated Determination

OIT staff shall take the following steps when a person inquires about a review of an OIT substantiated determination.

- (1) Staff of OIT will record the individual's name and address, and a telephone number when available.
- (2) OIT staff shall review the records to determine whether:

- (a) A notice of an OIT substantiated determination was delivered to the person; or
 - (b) Whether the person refused delivery.
- (3) If OIT staff determine that either the notice was delivered as evidenced by the returned receipt, or that the person refused the delivery as evidenced by the returned receipt, the staff may prepare and deliver a notice of waived rights for review.
- (4) If OIT staff determine that the notice was not delivered as evidenced by the returned receipt, the staff shall deliver a notice of OIT substantiated determination as outlined in OAR 309-045-0130 and 309-045-0160.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0150, DHS 9-2007, f. & cert. ef. 10-1-07

407-045-0660

Information Included in the Notice of an OIT Substantiated Determination

The Notice of an OIT substantiated determination shall include all of the following:

- (1) The case number assigned to the investigation that resulted in the OIT substantiated determination;
- (2) The full name of the individual who has been identified as responsible for the child abuse or neglect as it is recorded in the case record;
- (3) A statement that the OIT determination was recorded as substantiated, including a description of the type of child abuse or neglect identified;
- (4) A statement about the right of the individual to make a request for review of the substantiated determination;
- (5) Instructions for making a request for review, which must include the reason the individual believes the OIT substantiated determination is in error;
- (6) A statement that the person waives the right to request a review if the request for review is not received by the Office of Investigations and Training within 30 calendar days from the date of receipt of the notice of OIT substantiated determination, as documented by the U.S. Postal Service.

- (7) A statement that the ODDSRC shall consider all relevant case file information including the OIT investigation and determination, and all information provided by the person requesting review in their request for review, and that the ODDSRC shall not: re-interview the victim, interview or meet with the person requesting a review, or others associated with the requestor, or others mentioned in the investigation, or conduct a further investigation of the allegation of child abuse or neglect.
- (8) A statement that OIT will send the requestor notification of the ODDSRC's decision within 45 calendar days of receiving a written request for review.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0160, DHS 9-2007, f. & cert. ef. 10-1-07

407-045-0670

Making a Request for a Review of an OIT Substantiated Determination

- (1) A person who meets the criteria outlined in OAR 309-045-0150 may make a written request for review as follows:
- (2) A person requesting review shall use information found on the notice of OIT substantiated determination to prepare a written request for review. The written request for review shall be delivered to OIT within 30 calendar days of the receipt of the notice of OIT substantiated determination and shall include the following items:
 - (a) Date the request for review is written;
 - (b) Case number (found on the notice of OIT substantiated determination);
 - (c) Full name of the person identified as responsible in the OIT substantiated determination;
 - (d) The reason the person is requesting the review and an explanation of why the person believes the OIT substantiated determination is in error;
 - (e) The person's current name (if it has changed from the name noted in (c) above);
 - (f) The person's current street address, city, state, zip code, and telephone number; and
 - (g) The person's signature.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0170, DHS 9-2007, f. & cert. ef. 10-1-07

407-045-0680

Determining When Legal Findings Preclude a Right to Request a Review

- (1) A legal process or finding relevant to the substantiated determination will preclude a person's right to a review.
- (2) When the request for review is held pending the outcome of the legal process, and a legal finding is made that the child abuse or neglect or other offense stemming from the employee's or subcontracting individual's conduct occurred and is the subject of the OIT substantiated determination and that the person requesting review is responsible, a review shall not occur.
- (3) At the conclusion of a Court proceeding or legal process, when the person requesting a review is found not guilty, documentation of the legal finding must be provided to OIT by the requestor. The requested review will then be held within 30 calendar days of OIT's receipt of the documentation.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0180, DHS 9-2007, f. & cert. ef. 10-1-07

407-045-0690

OIT Responsibilities Related to Notices and Reviews

- (1) If an individual asks to review the record, ORS 179.505 and OAR 309-040-0200 through 309-040-0290 shall govern inspection and copying of records.
- (2) OIT staff shall maintain records to demonstrate the following, when applicable:
 - (a) Whether OIT delivered a notice of OIT substantiated determination;
 - (b) Whether or not the notice of OIT substantiated determination was received by the addressee, as evidenced by a returned receipt documenting the notice was received, refused, or not received within the 15 calendar day time period as provided by the U.S. Postal Service;
 - (c) Date a request for review was received;

- (d) When a review was made, whether the notice of the ODDSRC's decision was received by the perpetrator or not, as evidence by a returned receipt documenting the notice was received, refused, or not received within the 15 calendar day time period as provided by the U.S. Postal Service;
- (3) The OIT Director or designee shall maintain a comprehensive record of the reviews held of OIT substantiated determinations. The record shall include but is not limited to the date, case number, and ODDSRC decision.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA. & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0190, DHS 9-2007, f. & cert. ef. 10-1-07

407-045-0700

ODDS Review Committees and Reviews of OIT Substantiated Determinations

- (1) The ODDSRC shall conduct a review within 30 calendar days of OIT's receipt of a request for review of an OIT substantiated determination and issue a notice of ODDSRC decision.
- (2) If the request for review has been retained as per OAR 309-045-0180 and a legal finding was not made that would preclude a review, the review shall occur within 30 calendar days of OIT's receipt of documentation of the legal proceeding's outcome.
- (3) The ODDS Review Committee will operate as follows:
 - (a) The ODDSRC shall consider all relevant case file information including the OIT investigation report and determination, and information provided by the person requesting review in their request. The ODDSRC shall not: re-interview the victim, interview or meet with the person requesting a review, or others associated with the requestor, or others mentioned in the investigation, or conduct a further investigation of the allegation of child abuse or neglect.
 - (b) The ODDSRC shall have the authority to retain or change an OIT determination after a review has occurred;
 - (c) When reviewing an OIT substantiated determination, the ODDSRC shall determine whether there is or is not reasonable cause to believe that child abuse or neglect occurred and whether there is or is not reasonable cause to believe the person requesting review is responsible;
 - (d) The ODDSRC will decide by majority vote of the participating committee members if the OIT determination will be retained or changed. The decision of the ODDSRC is the final agency action.

- (4) The ODDSRC shall prepare and deliver a notice of the ODDSRC's decision to OIT.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0200, DHS 9-2007, f. & cert. ef. 10-1-07

407-045-0710

Providing a Notice of the ODDSRC's Decision

- (1) The notice of the ODDSRC's decision shall include the following items:
 - (a) Whether there is or is not reasonable cause to believe that child abuse or neglect occurred;
 - (b) Whether there is or is not reasonable cause to believe the person requesting the review was responsible for the child abuse or neglect;
 - (c) The decision of the ODDSRC about whether the OIT substantiated determination will be retained or changed; and if changed, whether it will be changed to either unsubstantiated or inconclusive;
 - (d) A summary of the information upon which the decision was based. When an OIT substantiated determination is changed, the information will be added to the investigation file.
- (2) The ODDSRC Assistant Administrator or designee shall deliver a copy of the ODDSRC decision to OIT, and the OIT Director or designee shall place the request for review and a copy of the ODDSRC decision into the case file. No change shall be made in the existing written case record.
- (3) If an OIT substantiated determination is changed by the ODDSRC, OIT staff shall notify the 24-hour program and the State Office for Services to Children and Families (SOSCF) within 30 days of the decision. The 24-hour program shall notify the victim and his or her parent or guardian.
- (4) OIT shall send the ODDSRC decision by certified mail, restricted delivery, with a return receipt requested, to the person requesting review within 15 calendar days of the ODDSRC review.

Stat. Auth.: ORS 430.041

Stats. Implemented: CAPTA & ORS 430.041

Hist.: MHD 14-2000(Temp), f. & cert. ef. 10-26-00 thru 4-23-01; MHD 1-2001, f. 4-9-01, cert. ef. 4-23-01; Renumbered from 309-045-0210, DHS 9-2007, f. & cert. ef. 10-1-07