

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted [upon filing] by the
Date prior to or same as filing date

Department of Human Services, Administrative Services Division and Director's Office 407
Agency and Division Administrative Rules Chapter Number

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to become effective [July 12, 2010] through [January 9, 2011].
Date upon filing or later A maximum of 180 days including the effective date

RULE CAPTION

Definition Correction in Abuse Reporting and Protective Services in Children's Care Provider (CCP) Settings
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

AMEND: OAR 407-045-0820

Stat. Auth.: ORS 409.050 & 418.005


Other Auth.: Child Abuse Prevention & Treatment Act (CAPTA); Adoption and Safe Families Act (ASFA)

Stats. Implemented: ORS 409.185, 418.005, 418.189, 418.205-418.327, 418.747, 419B.005-419B.050 & 419B.328

RULE SUMMARY

This rule is being temporarily amended to correct a scrivener's error in the definition of the term "Not Substantiated" in OAR 407-045-0820(15). The current rule (effective 7/1/10) states the standard of evidence as no reasonable cause to believe abuse occurred based on the available evidence. The correct legal standard is a preponderance of the evidence establishes the alleged abuse did not occur.

Temporary rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwss/rules/index.shtml>.
For hardcopy requests, call: (503) 947-5250.


Authorized Signer

Kym Gasper, Authorized Signer

Printed name

7/12/10

Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

ARC 940-2005

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Administrative Services Division and Director's Office

407

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

The temporary amendment of OAR 407-045-0820.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)
Definition Correction in Abuse Reporting and Protective Services in Children's Care Provider (CCP) Settings

Statutory Authority: ORS 409.050 & 418.005

Other Authority: Child Abuse Prevention and Treatment Act (CAPTA), Adoption and Safe Families Act (ASFA)

Stats. Implemented: ORS 409.185, 418.005, 418.189, 418.205-418.327, 418.747, 419B.005-419B.050 & 419B.328

Need for the Temporary Rule(s):

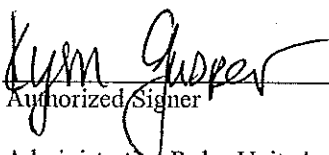
The Department needs to amend these rules to correct a scrivener's error in the definition of "Not Substantiated" in OAR 407-045-0820(15). The current rule, which became effective July 1, 2010, states the standard of evidence as no reasonable cause to believe abuse occurred based on the available evidence. The correct legal standard is a preponderance of the evidence establishes the alleged abuse did not occur.

Documents Relied Upon, and where they are available:

None.

Justification of Temporary Rule(s):

This error correction will also correct any potential prejudice or errors in a finding of "Not Substantiated" by applying the higher standard of proof required by other findings under these rules. The Department finds that failure to act promptly will result in serious prejudice to the public interest because the standard of proof for final determinations of abuse must be consistent, whether the ultimate finding is that abuse is "substantiated," not substantiated," or "inconclusive." This consistency is important for accused persons as well as for alleged victims of abuse. This rule needs to be adopted promptly to correct any potential prejudice or errors in a finding of "Not Substantiated" by applying the higher standard of proof required by other findings under these rules.


Authorized Signer

Kym Gasper, Authorized Signer

Printed name

7/12/10

Date

**CHAPTER 407
DEPARTMENT OF HUMAN SERVICES,
ADMINISTRATIVE SERVICES DIVISION AND DIRECTOR'S OFFICE**

**DIVISION 45
OFFICE OF INVESTIGATIONS AND TRAINING**

Abuse Reporting and Protective Services in Children's Residential Care Agencies, Day Treatment Programs, Therapeutic Boarding Schools, Foster Care Agencies, and Outdoor Youth Programs

407-045-0820

Definitions

The following definitions apply to OAR 407-045-0800 through 407-045-0980:

- (1) "Abuse" includes but is not limited to:
 - (a) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.
 - (b) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.
 - (c) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration, and incest, as defined in ORS chapter 163.
 - (d) Sexual abuse, as defined in ORS chapter 163.
 - (e) Sexual exploitation which includes but is not limited to:
 - (A) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces, or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording, or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670;
 - (B) Sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; or

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- (C) Allowing, permitting, encouraging, or hiring a child to engage in prostitution, as defined in ORS chapter 167.
 - (f) Negligent treatment or maltreatment of a child which includes but is not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the child's health or welfare.
 - (g) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.
 - (h) Buying or selling an individual under 18 years of age, as described in ORS 163.537.
 - (i) Permitting an individual under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.
 - (j) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.
- (2) "Child" means an unmarried individual under 18 years of age.
 - (3) "Children's care provider (CCP)" means a licensed residential care agency, day treatment program, foster care agency, therapeutic boarding school, or outdoor youth program that has assumed responsibility for all or a portion of the care of a child. The term includes the CCP's employees, agents, contractors and their employees, and volunteers.
 - (4) "Day treatment program" means a licensed CCP that provides day treatment services.
 - (5) "Day treatment services" means comprehensive, interdisciplinary, nonresidential, community based, psychiatric treatment, family treatment, and therapeutic activities integrated with an accredited education program provided to children with emotional disturbances.
 - (6) "Department" means the Department of Human Services.
 - (7) "Designated medical professional" means a medical professional as defined in ORS 418.747 who has been trained to conduct child abuse medical assessments pursuant to ORS 418.782.
 - (8) "Foster care agency" means a licensed child-caring agency that offers to place children by taking physical custody of and then placing the children in homes certified by that agency.
 - (9) "Inconclusive" means a preponderance of evidence is not available to determine whether the alleged abuse did or did not occur. Evidence may be inconclusive because relevant witnesses, documents, or records are unavailable, or because there is conflicting or

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inconsistent information from witnesses, documents, or records, with the result that at the conclusion of the investigation there is insufficient evidence to support a “substantiated” or a “not substantiated” conclusion.

- (10) “Legal finding” means a court or administrative finding, judgment, order, stipulation, plea, or verdict that determines who was responsible for the child abuse that is the subject of an OIT substantiation.
- (11) “Likely to endanger the health or welfare of the child” means negligent treatment or maltreatment that is likely to result in harm to the child, based on the available facts, and on the individual child’s particular physical, emotional, behavioral, or mental health needs, circumstances, or vulnerabilities.
- (12) “Maltreatment” means any action toward a child which carries a risk of harm to the child’s physical, emotional, behavioral, or mental health or welfare. Examples of staff behaviors that must be reported as potential abuse by maltreatment include but are not limited to the willful infliction of pain or injury (e.g. hitting, kicking, pushing, arm twisting, head twisting, etc.); exposure to domestic violence; inappropriate or excessive force during a containment hold or restraint; or other physical contact with the child inconsistent with prescribed treatment or care. All injuries during a restraint or hold must be reported, including minor injuries. Other behaviors that must be reported include the use of derogatory names, phrases, profanity, ridicule, harassment, intimidation, or coercion. While such behaviors do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the actions were likely to endanger the child’s health or welfare.
- (13) “Mandatory reporter” means an individual or entity having a duty to report as defined in ORS 419B.005 to 419B.050.
- (14) “Negligent treatment” means failure to perform duties or failure to take action required to protect the child’s health or welfare. Examples of staff behaviors that must be reported as potential abuse by negligent treatment include but are not limited to failure to supervise a child or failure to intervene when a child needs assistance or care. While such failures do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the failures were likely to endanger the child’s health or welfare.
- (15) “Not substantiated” means the ~~allegation is unfounded because the investigator concludes there is no reasonable cause to believe~~ preponderance of evidence establishes the alleged abuse occurred based on the available evidence did not occur.
- (16) “OIT” means the Department’s Office of Investigations and Training.
- (17) “OIT investigator” means an employee of the Department’s OIT who is authorized and trained to investigate reports of child abuse or neglect under these rules.

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- (18) “OIT Substantiation Review Committee (OSRC)” means a group of three Department employees selected by the Department’s Deputy Director or designee, none of whom was involved in any part of the investigation that resulted in the OIT substantiation under review. The committee must consist of Department employees who are knowledgeable about the dynamics of child abuse and neglect, including the assessment or investigation of child abuse and neglect, and Department employees with knowledge of abuse investigations, especially where abuse is alleged to have occurred in out-of-home settings.
- (19) “Outdoor youth program” means a licensed program that provides, in an outdoor living setting, services to youth who are enrolled in the program because they have behavioral or mental problems, or problems with abuse of alcohol or drugs. “Outdoor youth program” does not include any program, facility, or activity operated by a governmental entity, operated or affiliated with the Oregon Youth Conservation Corps, or licensed by the Department as a child-caring agency under other Department authority. It does not include outdoor activities for youth designed to be primarily recreational such as YMCA, Outward Bound, Boy Scouts, Girl Scouts, Campfire, church groups, or other similar activities.
- (20) “Person” means the person OIT has reasonable cause to believe is responsible for child abuse in a substantiated OIT report, and about whom a substantiated finding has been made.
- (21) “Protective action” means a set of services or activities undertaken to address and meet a child’s safety needs after a report of abuse has been received by OIT.
- (22) “Residential care agency” means a licensed child-caring agency that provides services to children 24 hours a day.
- (23) “Substantiated” means that a preponderance of evidence establishes the alleged abuse occurred.
- (24) “Suspicious physical injury” is defined in ORS 419B.005 and includes but is not limited to burns or scalds; extensive bruising or abrasions on any part of the body; bruising, swelling, or abrasions on the head, neck, or face; fractures of any bone in a child under the age of three; multiple fractures in a child of any age; dislocations, soft tissue swelling, or moderate to severe cuts; loss of the ability to walk or move normally according to the child’s developmental ability; unconsciousness or difficulty maintaining consciousness; multiple injuries of different types; injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or any other injury that threatens the physical well-being of the child.
- (25) “Therapeutic boarding school” means a licensed organization or a program in an organization that:
- (a) Is primarily a school and not a residential care agency;

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- (b) Provides educational services and care to children 24 hours a day; and
- (c) Holds itself out as serving children with emotional or behavioral problems, providing therapeutic services, or ensuring that children receive therapeutic services.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.189, 418.205-418.327, 418.747, 419B.005-419B.050 & 419B.328