



**STATE OF WASHINGTON
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES**

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August 8, 2022

TO: Interested Persons

FROM: Tarassa Froberg, CPS-FVS Program Manager

SUBJECT: CONCISE EXPLANATORY STATEMENT (*RCW 34.05.325*)

For rules proposed under notice filed as WSR 22-07-030 on March 11, 2022: WAC 110-30-0230 and 110-30-0280

REASON FOR ADOPTION:

- Require requests for review of child abuse and neglect founded findings to be made as instructed in the founded finding notice and within 30 days of the date the alleged perpetrator receives the notice of founded finding;
- Clarify that a founded finding decision may not be challenged further if a request for review is not made within 30 days after the alleged perpetrator receives the notice of founded finding; and
- Require requests for administrative hearings of founded finding decisions to be made as instructed in the notice of decision and filed with the Office of Administrative Hearings no later than 30 days after a founded finding decision is received.

CHANGES MADE SINCE THE RULE WAS PROPOSED:

WAC 110-30-0230(1) revised to refer to the instructions for requesting review that are included in Child Protective Services' founded finding letters..

COMMENTS RECEIVED:

See attached comment. We disagree with the statement that "there is no other rule in Chapter 110-30 WAC that requires DCYF to inform alleged perpetrators [how to request a review]. WAC 110-30-0200(4) requires the founded finding notice to explain how to challenge the finding. Nonetheless, final WAC 110-30-0230(1) was revised to include a reference to the instructions.

This document also serves as the summary of public hearing comments to the agency head required under RCW 34.05.325(4).

cc: DCYF Rules Coordinator



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César E. Torres
Executive Director

April 26, 2022

DCYF Rules Coordinator

SENT VIA EMAIL to DCYF Rules Coordinator at dcyf.rulescoordinator@dcyf.wa.gov

Re: Comments on CR-102 to amend Chapter 110-30 WAC, WSR 22-07-030

Dear DCYF Rules Coordinator:

The Northwest Justice Project represents parents, low-wage workers, family members, and others affected by the rule changes contemplated in CR-102 filed under WSR 22-07-030. We appreciate the importance of protecting children, adhering to federal requirements, along with the need for clear and consistent guidelines. As you prepare for the next stage in the rulemaking process, we offer these comments.

1. PROPOSED AMENDMENT TO WAC 110-30-0230

This proposed amendment states:

WAC 110-30-0230 How ~~((does an))~~ do alleged perpetrators challenge ~~((a))~~ their founded CPS findings? (1) In order to challenge ~~((a))~~ founded CPS findings, ~~((the))~~ alleged perpetrators must ~~((make a written))~~ request in writing for CPS to review ~~((the))~~ their founded CPS findings of child abuse or neglect. ~~((The CPS finding notices must provide the information regarding all steps necessary to request a review.))~~

(2) ~~((The))~~ Alleged perpetrators must request ~~((must be provided to the same CPS office that sent))~~ the CPS review of their founded CPS finding notice within ~~((thirty))~~ 30 calendar days from the date ~~((the alleged perpetrator receives the CPS finding notice (RCW 26.44.125)))~~ they received it. If requests are not made within 30 days, alleged perpetrators may not further challenge the findings.

This proposal would change the language for when a person must file an administrative hearing following a CPS founded finding decision. The CR 102 says it is “clarifying” the language of WAC 110-30-0230. However, the proposed change removes the requirement that “The CPS finding notice must provide the information regarding all steps necessary to request a review”. This requirement appears nowhere else in the chapter.

Notification of a CPS founded finding is serious business. A CPS finding can be a life-changing event. It can mean the permanent loss of one’s ability to earn income in one’s chosen

profession, as well as other major life impacts on relationships within the community, and also for the vulnerable adult. The alleged perpetrator should have a fair and meaningful opportunity to address the finding, if they choose to do so.

We appreciate that the proposed change to subsection 2 (regarding whether the request needs to be "provided" to the Department) is likely necessary to bring the regulation into compliance with the court ruling in *Rios-Garcia v. DCYF*. However, we are unsure that there is any reason that the ruling itself would necessitate removing the Department's obligation to inform individuals of the steps necessary to request review. It would still benefit individuals against whom DCYF makes findings to have clear instructions about where to mail their request for review.

For these reasons and for those below, DCYF should consider Northwest Justice Project's recommendation.

A. DCYF's Proposal Would Be Inconsistent with the Notice Requirements in RCW 26.44.100 and RCW 26.44.125.

In RCW 26.44.100(1), the Legislature made clear its intent to "ensure that parents...be advised in writing and orally, if feasible, of their basic rights and other specific information..." The Legislature found that parents "often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect." RCW 26.44.100(1). Among other things, the Legislature "reaffirms that all citizens, including parents, shall be afforded due process..." *Id.* As the court observed in *Rios-Garcia*:

It is a declared purpose of chapter 26.44 RCW in general that "[r]eports of child abuse and neglect shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports *and so as to safeguard against arbitrary, malicious or erroneous information or actions.*"

Rios-Garcia v. State Dep't of Soc. & Health Servs., 18 Wn. App. 2d 660, 672, 493 P.3d 143, 150 (2021) (citing RCW 26.44.010). (Emphasis in original).

Similarly, the purpose of RCW 26.44.125 is "to afford an alleged perpetrator a meaningful opportunity for review." *Id.* at 672-673.

Regarding CPS founded finding notices, the Legislature has determined that they shall provide certain information to alleged perpetrators regarding their rights and the Department's procedures. RCW 26.44.100¹; RCW 26.44.125. For example, both statutes require that notices

¹ The notice shall also advise the subject of the report that:

- (a) A written response to the report may be provided to the department and that such response will be filed in the record following receipt by the department;
- (b) Information in the department's record may be considered in subsequent investigations or proceedings related to child protection or child custody;
- (c) Founded reports of child abuse and neglect may be considered in determining whether the person is disqualified from being licensed to provide child care, employed by a licensed child care agency, or authorized by the department to care for children; and

advise alleged perpetrators that they may submit a written response regarding a finding to the Department. *Id.* The Department is required to include such response in its records. Both statutes also require that notices advise alleged perpetrators of their right to seek review of a founded finding. *Id.*

Requesting review by CPS management is a necessary step prior to seeking a hearing to challenge a founded finding. If the subject of a CPS investigation does not seek review within 30 days of receiving notice, then CPS regulations prevent them from requesting a hearing. With the stakes that high, DCYF should reconsider its proposal. Removing the requirement to “provide the information regarding all steps necessary to request a review,” presents unnecessary obstacles to seeking review. That proposal is inconsistent with the Legislature’s stated intent in RCW 26.44.100 and RCW 26.44.125. The Department should reconsider its proposal.

B. Proposed WAC 110-30-0230 is Inconsistent with Proposed WAC 110-30-0280 and with Existing Regulations Regarding Notice of Findings.

In proposed WAC 110-30-0280(2), DCYF has recognized the importance of providing instructions for requesting a hearing with OAH:

Requests for administrative hearings must be in writing and filed with the office of administrative hearings (OAH) *as instructed in the notice* of the CPS management review decision.

(Emphasis added).

In other DCYF regulations, the Department recognizes the importance of providing notice to alleged perpetrators. WAC 110-30-0190(1) provides that:

CPS notifies the alleged perpetrator of the founded finding by sending the CPS finding notice via certified mail, return receipt requested, to the last known address. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

Notably, it is only for *unfounded* findings that CPS may send notice by regular mail or even by email. WAC 110-30-0190(2).

By eliminating the requirement that “The CPS finding notice must provide the information regarding all steps necessary to request a review,” in proposed “0230,” DCYF undermines its own proposal in “0280.” It further undermines the spirit and intent of its other notice regulations.

C. In General, Due Process Requires Not Only Informing Someone of Their Right to Appeal, but Also Informing Them *How* to Appeal a State Action.

(d) A subject named in a founded report of child abuse or neglect has the right to seek review of the finding as provided in this chapter.

Both the U.S. Constitution and Washington State’s Constitution guarantee due process of law. At a minimum, there must be notice and a meaningful opportunity to be heard when “liberty” or “property” interests are at stake. *See* U.S. Const. amend. V, XIV, § 1; Wash. Const. art. I, § 3; *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950); *Downey v. Pierce Cty.*, 165 Wn. App. 152, 164, 267 P.3d 445, 451 (2011). While a particular situation might determine the exact forms of due process, the “fundamental requisite” is the opportunity to be heard. *Mullane*, 339 U.S. at 314 (quoting *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363).

However, the right to be heard is meaningless without proper notice. *Mullane*, 339 U.S. at 314 (“right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest”). Proper notice that comports with the basic principles of due process must reasonably convey required information. *Id.* It must also afford a reasonable time for those interested to make their appearance. *Id.*

DCYF’s proposal to remove the agency’s obligation to inform alleged perpetrators on how to request a review is inconsistent with due process requirements. Both the Legislature and the Courts have recognized the purpose of RCW 26.44.125 (on which WAC 110-30-0230 is based): to afford an alleged perpetrator a meaningful opportunity for review. *Rios-Garcia v. Washington State Dep't of Soc. & Health Servs.*, 18 Wn. App. 2d 660, 672–73, 493 P.3d 143, 150 (2021). DCYF also recognizes this purpose. It specifically provides that “the purpose of the rules is to describe the process for challenging a founded CPS finding of child abuse or neglect.” WAC 110-30-0170(2). However, DCYF’s proposal would fall short of providing alleged perpetrators with a meaningful opportunity for review.

There is no other rule in Chapter 110-30 WAC that requires DCYF to inform alleged perpetrators about these requirements. However, under DCYF’s proposal, the agency will no longer have the obligation to inform alleged perpetrators that a review request must be in writing. Nor would the agency have the obligation to inform them of where to send the request for review. Similarly, the agency would be under no obligation to include in its notices the submission deadline and that individuals may submit relevant documentation with their requests.

A notice that fails to inform individuals of how to request review would be inconsistent with due process requirements. Therefore, a founding finding notice that fails to inform alleged perpetrators on how to request a review would also be inconsistent with due process requirements. DCYF’s founded finding notice should continue to inform alleged perpetrators how to request a review. This would satisfy the due process requirement of a meaningful opportunity to be heard.

D. The Potential for Racial Disparity.

When considering the type of notice an individual receives, it is also important to keep in mind the potential for racial disparities in CPS findings. Despite all the progress with Certificates of Parental Improvement (CPIs), these disparities might persist. Erecting barriers to review is only likely to perpetuate those disparities.

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Recommendation

Keep the following sentence in WAC 110-30-0230(1): “The CPS finding notices must provide the information regarding all steps necessary to request a review.”

Thank you for the opportunity to comment in this external review. We look forward to further participation in this process.

Very truly yours,

/s/ Alberto Casas

Alberto Casas
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