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## PERMANENT ADMINISTRATIVE ORDER

### DHSD 5-2020

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

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#### RULES:

407-047-0400, 407-047-0410, 407-047-0420, 407-047-0430, 407-047-0440, 407-047-0450, 407-047-0460, 407-047-0470, 407-047-0480, 407-047-0490, 407-047-0500, 407-047-0510, 407-047-0520

ADOPT: 407-047-0400

RULE TITLE: Investigations in Child Care: Purpose and Scope

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule provides the purpose and scope under which OTIS is responsible for screening and investigating reports of child abuse in a child care.

#### RULE TEXT:

The Department receives reports of abuse of children and screens them to determine the response required under ORS chapter 419B. The purpose of these rules, OAR 407-047-0400 through 407-047-0520, is to describe:

- (1) The circumstances under which the Office of Training, Investigations and Safety (OTIS) is responsible to respond to a report of child abuse of a child involving a caregiver, household member, contractor, or volunteer of a child care;
- (2) The requirements for screening and investigating a report of alleged child abuse received by the Department effective June 1, 2020 that is the responsibility of OTIS; and
- (3) The requirement to provide respondents with notice and the right to request a contested case hearing.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 to 419B.050

ADOPT: 407-047-0410

RULE TITLE: Investigations in Child Care: Definitions

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule defines terms used in the child care investigation rules (OAR 407-047-0400 through 407-047-0520).

RULE TEXT:

Unless the context indicates otherwise, the following definitions apply to these rules, OAR 407-047-0400 through 407-047-0520:

- (1) "Abuse" means as defined in ORS 419B.005 (see OAR 407-047-0470(2)).
- (2) "Abuse determination" means the determination OTIS makes after an investigation under these rules (407-047-0400 through 407-047-0520) that a report of abuse is founded, unfounded or unable to determine as described in OAR 407-047-0470.
- (3) "Abuse investigation report" means the report the OTIS investigator completes as provided in OAR 407-047-0480 on a report of abuse that is determined to require an investigation under OAR 407-047-0430(1)(a).
- (4) "Alleged victim" means the child who is reported or alleged to be subjected to abuse by a caregiver, household member, contractor, or volunteer of a child care investigated under these rules (407-047-0400 through 407-047-0520).
- (5) "Business days" means all consecutive calendar days, not counting Saturdays, Sundays and legal holidays as defined in ORS 187.010.
- (6) "Child" means an individual who is under 18 years of age.
- (7) "Child Care" means each of the following:
  - (a) A Registered Family Child Care Home, which is the residence of a provider who has a current Family Child Care Registration at that address and who provides care in the family living quarters.
  - (b) A Certified Family Child Care Home, which is a child care facility located in a building constructed as a single-family dwelling that has certification to care for a maximum of 16 children at any one time.
  - (c) A Certified Child Care Center, which is certified to care for 13 or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single-family dwelling.
  - (d) A Regulated Subsidy Provider, which is a child care provider that is exempt from Office of Child Care licensing and that receives subsidy payments for child care on behalf of clients of the Department.
  - (e) Other facilities that are operating as a Registered Family Care Home, Certified Family Child Care Home, Certified Child Care Center, or Regulated Subsidy Provider without a certification or registration when a certification or registration is required by the Office of Child Care.
- (8) "Caregiver" means any person in the child care who works directly with the children, providing care, supervision, and guidance.
- (9) "Contractor" means a person who:
  - (a) Provides services to a child care provider in a manner that requires the person to have direct, unsupervised contact with children; and
  - (b) Interacts with a child because of the person's status as a contractor for a child care provider.
- (10) "Department" means the Oregon Department of Human Services (DHS).
- (11) "Indian child" as defined in 25 U.S.C. § 1903(4) means any unmarried individual who is under age 18 and either:
  - (a) Is a member or citizen of an Indian tribe; or
  - (b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.
- (12) "Household member" means an adult who lives in the child care and is not a child care caregiver, contractor, or volunteer.

(13) "Legal guardian" means for an individual under the age of 18, the parent, unless a court appoints another person or agency to act as the individual's guardian.

(14) "OTIS investigator" means a Department: Office of Training, Investigations and Safety (OTIS) employee who is authorized and receives OTIS approved training to screen or investigate reports of abuse under 407-047-0400 through 407-047-0520.

(15) "OTIS response" means how OTIS will respond to a report of abuse that is determined at the conclusion of the OTIS screening process.

(16) "Reasonable cause" means a subjectively and objectively reasonable belief, given all of the circumstances and based on specific and articulable facts. (ORS 419B.150)

(17) "Reasonable suspicion" for purposes of complying with ORS 419B.023 (Karly's Law) means a reasonable belief given all the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse. Explanation: The belief must be subjectively and objectively reasonable. In other words, the individual subjectively believes that the injury may be the result of abuse, and the belief is objectively reasonable considering all of the circumstances. The circumstances that may give rise to a reasonable belief may include, but not be limited to, observations, interviews, experience, and training. The fact that there are possible non-abuse explanations for the injury does not negate "reasonable suspicion."

(18) "Redacted" means information deemed confidential under state or federal law has been protected from view.

(19) "Reporter" means an individual who makes a report of suspected child abuse to the Department.

(20) "Respondent" means an adult alleged to have committed abuse.

(21) "Screening" means the process used by OTIS to determine the response to reports that are determined to be the responsibility of OTIS.

(22) "Severe harm" means:

(a) Life threatening damage; or

(b) Significant or acute injury to a person's physical, sexual, or psychological functioning.

(23) "Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of an individual under the age of 18 for the purpose of a commercial sex act or the recruitment, harboring, transportation, provision.

(24) "Suspicious physical injury" means as defined in ORS 419B.023 (Karly's Law).

(25) "Volunteer" means a person who:

(a) Acts as a volunteer for a child care; and

(b) Interacts with a child because of the person's status as a volunteer of a child care.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 to 419B.050

ADOPT: 407-047-0420

RULE TITLE: Investigations in Child Care: Screening Activities

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule describes the screening activities that an OTIS investigator must complete for reports of child abuse in a child care.

RULE TEXT:

(1) This rule describes the screening activities that an OTIS investigator must complete within three business days when a report is determined to be the responsibility of OTIS as provided in OAR 413, division 15.

(2) Gather information. An OTIS investigator must:

(a) Ensure all of the following information has been gathered and documented:

(A) The type of alleged abuse and the circumstances surrounding the report.

(B) How the alleged abuse or the surrounding circumstances are reported to affect the safety of the alleged victim.

(b) Gather information from individuals who can provide information necessary to determine the appropriate OTIS response.

(c) Research Department history of each respondent for information about past or current Department involvement relevant to the current report of abuse.

(d) Inquire regarding possible Indian or Alaskan Native heritage of the child and follow OAR 413, division 115 if applicable.

(e) Request relevant law enforcement records.

(f) Request relevant records from the child care pertaining to the alleged victim of abuse.

(g) For the purposes of cross-reporting, determine the law enforcement agency jurisdiction based on where the abuse is alleged to have occurred.

(h) Determine if the report is related to the death of a child and comply with the Department of Human Services: Child Welfare "Fatality Protocol" if applicable.

(3) When screening activities in section (2) of this rule are complete, the OTIS investigator must:

(a) Determine the OTIS response as provided in OAR 407-047-0430; and

(b) Make screening notifications as provided in OAR 407-047-0440.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 to 419B.050

ADOPT: 407-047-0430

RULE TITLE: Investigations in Child Care: Determining Response

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule defines when an investigation is required, when a report will be closed at screening and when a report needs to be referred to another authority.

RULE TEXT:

(1) Based on information gathered in OAR 407-047-0420, an OTIS investigator must determine the OTIS response, which must be one of the following:

(a) An investigation is required under section (2) of this rule.

(b) An investigation is not required under section (2) of this rule and the report will be closed at screening as provided in section (4).

(c) Refer to other authority as provided in section (5).

(2) Investigation required. An investigation is required when either:

(a) The OTIS investigator determines all of the following are true:

(A) The information alleged in the report meets the definition of abuse in ORS 419B.005.

(B) At the time of the alleged abuse, the respondent was a caregiver, household member, contractor, or volunteer of a child care.

(C) The alleged victim was a child at the time of the alleged abuse, as defined in these rules (407-047-0400 through 407-047-0520).

(D) The contact the respondent had with the alleged victim was due to the respondent's role as a caregiver, household member, contractor, or volunteer of a child care.

(b) The director of OTIS determines that the Department is authorized by Oregon law to investigate and it is in the best interest of child safety for OTIS to investigate.

(3) If an investigation is required under section (2) an OTIS supervisor determines the OTIS initial contact timeline. The OTIS supervisor must consider whether the respondent poses a risk to the alleged victim or other children to whom the respondent has access. The initial contact timeline must be:

(a) Within 24 hours.

(b) Within 72 hours. This response timeline must only be used when the OTIS investigator can clearly document how the information indicates that the safety of the child will not be compromised by not responding within 24 hours and whether an intentional delay to allow for a planned response is less likely to compromise the safety of the child.

(c) An OTIS supervisor may change the OTIS initial contact timeline. When changing from within 24 hours to within 72 hours, the supervisor must explain in writing why the timeline was changed and how safety was considered when the change was approved.

(4) Close at screening.

(a) A report must be closed at screening when both of the following are true:

(A) The report was properly determined to be the responsibility of OTIS under OAR 413, division 15.

(B) An investigation is not required under section (2) of this rule.

(b) OTIS supervisor approval must be obtained when a report will be closed at screening.

(5) When a report is determined not to be the responsibility of OTIS under OAR 413 division 15, OTIS must refer the report to the appropriate authority. OTIS must follow mandatory reporting requirements of other Oregon Revised Statutes.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 to 419B.050



ADOPT: 407-047-0440

RULE TITLE: Investigations in Child Care: Notifications at the Conclusion of Screening

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule defines required notifications when a report is assigned for investigation, closed at screening or referred to another authority.

RULE TEXT:

The OTIS investigator is responsible for making the following notifications when a report is assigned for investigation, closed at screening or referred to other authority:

- (1) Cross-report to local law enforcement agencies by providing the full screening report as required in ORS 419B.015.
- (2) The owner, executive director, operator, or central administrator of the child care except when it could compromise a child's safety or a criminal investigation.
- (3) Department of Education: Office of Child Care as required by ORS 419B.020(1).
- (4) Department of Human Services: Self-Sufficiency Child Care Policy Unit.
- (5) Make diligent efforts to notify the reporter that the report was assigned for investigation, closed at screening, or referred to another authority.
- (6) Others as required or otherwise authorized including, but not limited to:
  - (a) The tribe as provided under OAR chapter 413, division 115 when the OTIS investigator knows or has reason to know the alleged victim is an Indian child.
  - (b) Disability Rights Oregon when a report of abuse is alleged to have occurred at a school or in an educational setting and the report involves a child with a disability. (ORS 419B.035(1))
  - (c) The Office of Developmental Disabilities Services (ODDS) when a report involves a home certified by ODDS or a child receiving services from ODDS.
  - (d) The Teacher Standards and Practices Commission if the Department believes the child care caregiver, household member, contractor, or volunteer is licensed or registered by the commission.
  - (e) Any individual, administrative hearings officer, court, agency, organization, or other entity when determined necessary under ORS 419B.035(3).
- (7) The Department must not disclose the name and address of, and other identifying information about the reporter. The Department must make available any information necessary to ensure the safety of the child, including the name of the child care and the name of the person who may have conducted the suspected abuse. Any person or entity to whom notification is made under this subsection may not release any information not authorized by this subsection.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 to 419B.050

ADOPT: 407-047-0450

RULE TITLE: Investigations in Child Care: Investigating Reports of Abuse

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule defines the investigative activities that must be attempted and when possible completed by the OTIS investigator.

RULE TEXT:

An OTIS investigator must attempt and, when possible, complete all of the following activities when a report has been assigned for investigation:

- (1) The OTIS investigator must contact the responsible law enforcement agency as provided in ORS 419B.015 to establish if a criminal investigation is being conducted and jointly determine the roles and responsibilities of OTIS and law enforcement agency in their respective investigations.
- (2) The OTIS investigator must notify and coordinate with the Compliance Unit of the Department of Education: Office of Child Care as required by ORS 419B.020(1).
- (3) Share information and coordinate with Department personnel or other appropriate entities who have responsibilities to children associated with the report of abuse.
- (4) Make initial contact with the alleged victim's legal guardian and the alleged victim of abuse within the OTIS initial contact timeline assigned at screening.
- (5) The OTIS investigator must communicate with owner, executive director, operator or central administrator of the child care at the beginning of the investigation to notify them of the allegations, arrange for access to the child care, plan interviews that will take place at the child care, and gain access to names of other children and their parents who may have been a witness or could be a collateral source for the OTIS investigation. The OTIS investigator is not required to communicate with the owner, executive director, operator, or central administrator of the child care if it could compromise a child's safety or a criminal investigation.
- (6) Attempt to interview the following:
  - (a) The child who is the alleged victim in the report.
  - (b) Any witnesses to the alleged abuse.
  - (c) The respondent.
  - (A) If the respondent refuses to be interviewed, this must be documented in the abuse investigation report.
  - (B) If the respondent does not respond to a request to be interviewed, at least three additional attempts to interview the respondent must be made:
    - (i) At least one of the additional three attempts must be made by phone to the last known phone number.
    - (ii) At least one of the additional three attempts must be made by mail to the last known address.
    - (iii) All attempts to contact the respondent must be documented in the abuse investigation report.
  - (d) Others who may have knowledge of the facts of the alleged abuse or related circumstances as determined appropriate by the OTIS investigator.
  - (e) Conduct interviews in person when practicable.
  - (f) Conduct interviews with alleged victims and witnesses without the presence of caregivers, household members, contractors, or volunteers of the child care if determined appropriate by the OTIS investigator.
  - (g) Notify the legal guardian of a child prior to any interview with a child, unless notification is prohibited by law or court order or would compromise safety or a criminal investigation.
  - (h) Inform individuals being interviewed that they may decline to be interviewed.
  - (i) Comply with ORS 419B.045 when an interview or other contact will occur on public school premises.
- (7) Obtain and review all relevant material evidence, which includes, but is not limited to:
  - (a) Conducting a site visit to the child care that is the subject of the report of abuse or other relevant location as determined appropriate by the OTIS investigator.

- (b) Receiving and reviewing video or audio records from the child care or the community.
- (c) Receiving, reviewing, or copying records, documents and materials pertaining to the alleged victim of abuse including, but not limited to, incident reports, evaluations, Individual Family Services Plan (IFSP), Individual Education Plan (IEP), attendance records, or other documents as determined appropriate by the OTIS investigator.
- (d) Receiving, reviewing, or copying records, documents and materials pertaining to the child care or any of the child care's caregivers, household members, contractors, or volunteers including, but not limited to, performance reviews, records of past complaints or concerns and attendance records.
- (e) Receiving, reviewing, or copying records, documents and materials pertaining to the respondent and anyone who resides in or frequents the child care.
- (f) Taking photographs as determined appropriate by the OTIS investigator.
- (g) Receiving and reviewing relevant law enforcement records.
- (8) When an OTIS investigator observes a child, who has suffered a suspicious physical injury and the OTIS investigator is certain or has reasonable suspicion that the injury is or may be the result of abuse, the OTIS investigator must comply with ORS 419B.023 (Karly's Law). This includes:
  - (a) Identifying the protocols and procedures of the applicable county multidisciplinary child abuse team described in ORS 418.747; and
  - (b) Ensuring photographs are taken and medical assessments are pursued as provided in the applicable protocol.
- (9) If any of the requirements in (1) through (8) of this rule cannot be met:
  - (a) Consult with an OTIS supervisor regarding the requirements that cannot be met;
  - (b) Obtain approval from an OTIS supervisor for deviating from the requirements of this rule; and
  - (c) Explain which requirements in this rule that cannot be met and document OTIS supervisor approval in the investigative report.
- (10) When investigation activities are complete:
  - (a) Unless an exception in OAR 407-047-0460 (Exception to Completing an Investigation) applies, make an abuse determination as provided in OAR 407-047-0470;
  - (b) Issue an abuse investigation report as provided in OAR 407-047-0480; and
  - (c) Make notifications as provided in OAR 407-047-0490.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 to 419B.050

ADOPT: 407-047-0460

RULE TITLE: Investigations in Child Care: Exception to Completing an Investigation

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule defines the circumstances when an exception can be made for an assigned investigative report to be closed as "Opened in Error" or "Does not meet abuse definition."

RULE TEXT:

(1) The OTIS Supervisor may determine that an assigned report does not require an investigation under the following exceptions:

(a) The report was assigned for investigation in error; or

(b) Does not meet abuse definition. The OTIS investigator received information after the report was assigned for investigation and that information, in combination with the corresponding screening report, no longer constitutes a report of abuse as defined in ORS 419B.005. This exception may be used only when the OTIS investigator and an OTIS supervisor or designee determine the information:

(A) Relates directly to and specifically negates all allegations in the screening report; and

(B) Is considered on the basis of the objectivity of the individual providing the information and the quality of the information.

(2) An investigation must be completed when the OTIS investigator has already interviewed the alleged victim, unless the alleged victim is the reporter.

(3) The OTIS investigator must document the exception and:

(a) Explain the basis for the determination that an OTIS investigation is no longer required; and

(b) Document the name of the OTIS supervisor who was consulted and approved an exception under this rule.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 to 419B.050

ADOPT: 407-047-0470

RULE TITLE: Investigations in Child Care: Abuse Determination

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule outlines the definitions of abuse and requirements for making an abuse determination.

RULE TEXT:

(1) Except as provided in OAR 407-047-0460, an abuse determination must be made for all reports of abuse that are determined to require an investigation under OAR 407-047-0430.

(a) When making an abuse determination, the standard of proof is reasonable cause to believe.

(b) Based on the available evidence after conducting an investigation, the possible abuse determinations are:

(A) "Founded," which means there is reasonable cause to believe the abuse occurred.

(B) "Unfounded," which means there is no evidence the abuse occurred.

(C) "Unable to Determine," which means there is insufficient evidence to conclude that there is reasonable cause to believe the abuse occurred. "Unable to Determine" may only be used in the following circumstances:

(i) After extensive efforts have been made, the OTIS investigator is unable to locate the alleged victim; or

(ii) After completing the investigation, there is insufficient information to support an abuse determination of Founded or Unfounded and the alleged victim is unable or unwilling to provide consistent information or there is conflicting information from collateral contacts.

(2) Except as provided in section (3), abuse of a child, for the purpose of making an abuse determination on a report subject to ORS 419B.005, includes, but is not limited to:

(a) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.

(b) Mental injury (psychological maltreatment), including cruel or unconscionable acts or statements made, threatened to be made, or permitted to be made by the respondent that has a direct effect on the child. The respondent's behavior, intentional or unintentional, must be related to the observable and substantial impairment of the child's psychological, cognitive, emotional, or social well-being and functioning.

(c) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Neglect includes each of the following:

(A) Physical neglect, which includes each of the following:

(i) Failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.

(ii) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.

(iii) Unlawful exposure of a child to a substance that subjects a child to severe harm to the child's health or safety. When the OTIS investigator is making a determination of physical neglect based on severe harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care.

Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide a child with immunizations or routine care alone does not constitute medical neglect. When the OTIS investigator is making a determination of medical neglect, this determination must be consistent with medical findings.

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.

(D) Desertion, which includes the respondent leaving the child with another person and failing to reclaim the child, or respondent failure to provide information about their whereabouts, providing false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or

emotional development. The respondent's behavior must be related to the observable and severe harm of the child's psychological, cognitive, emotional, or social well-being and functioning.

(d) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given.

Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include, but are not limited to:

(A) Head injuries;

(B) Bruises, cuts, lacerations;

(C) Internal injuries;

(D) Burns or scalds;

(E) Injuries to bone, muscle, cartilage, and ligaments;

(F) Poisoning;

(G) Electrical shock; and

(H) Death.

(e) Sexual abuse, which includes:

(A) A person's use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.

(B) Sexual exploitation, including, but not limited to, the use of a child in a sexually explicit way for personal gain to make money, in exchange for goods, services, or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.

(C) Sex trafficking.

(f) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of severe harm of physical abuse, sexual abuse, neglect, mental injury, or other abuse.

(3) Abuse does not include reasonable discipline unless the discipline results in one of the conditions described in section (2) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 to 419B.050

ADOPT: 407-047-0480

RULE TITLE: Investigations in Child Care: Abuse Investigation Report

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule outlines the required contents of an abuse investigation report, required timeline to complete an investigation, and circumstances when extensions to the timeline can be granted.

RULE TEXT:

(1) Timeline to Complete the Abuse Investigation Report.

(a) Unless an extension is granted as provided in subsection (c) of this section, an OTIS investigator must complete and electronically submit the abuse investigation report for supervisor approval within 60 calendar days from the date the report was assigned for investigation.

(b) An OTIS supervisor must review and approve the completed abuse investigation report within five business days of the electronic submission by the OTIS investigator.

(c) An extension to the timeline may be granted when:

(A) OTIS supervisor may approve a one-time 30 calendar day extension when good cause is shown, such as when critical information necessary to make an abuse determination is outstanding.

(B) The director of OTIS may approve additional extensions only for reasons beyond the control of OTIS, such as to allow a law enforcement investigation to proceed.

(C) When an extension is granted under this subsection, the OTIS investigator must notify the Oregon Department of Education: Office of Child Care, Department of Human Services: Self-Sufficiency Child Care Policy Unit and, the owner, executive director, operator, or central administrator of the child care of the approved extension and the new due date for the report's completion, except when it could compromise a child's safety or a criminal investigation.

(2) The OTIS investigator must prepare a written report that includes all of the following:

(a) A description of the allegation of abuse being investigated, including the date, location, and time, if known.

(b) An outline of steps taken, and information gathered in the investigation including, but not limited to, a list of all witnesses interviewed, and summary of information obtained from interviews and list of sources of information reviewed, such as records, reports, etc. and summary of information obtained from those information sources.

(c) A specific determination of whether the abuse allegation is founded, unfounded or unable to determine, as provided in OAR 407-047-0470 and the basis for that determination.

(d) A list of all individuals and entities notified under OAR 407-047-0440 and 407-047-0490.

(e) The name and title of the individual completing the abuse investigation report.

(f) Documentation that an OTIS supervisor has reviewed and approved the abuse investigation report.

(3) The failure of OTIS to include all elements of section (2) does not invalidate the written report or abuse determination.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 to 419B.050

ADOPT: 407-047-0490

RULE TITLE: Investigations in Child Care: Notifications at the Conclusion of an Investigation

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule defines required notifications when an abuse investigation report has been completed and approved.

RULE TEXT:

After an abuse determination is made and the abuse investigation report has been approved, OTIS must make and document the following notifications:

- (1) OTIS must notify law enforcement of the abuse determination and may provide a unredacted copy of the abuse investigation report.
- (2) If not a respondent, OTIS must notify the owner, executive director, operator, central administrator, or designated authority of the child care.
- (3) OTIS must notify the respondent when:
  - (a) A report is determined to be "Unfounded" or "Unable to Determine" (see OAR 407-047-0470), OTIS must provide written notice to the respondent.
  - (b) A report is determined to be "Founded" (see OAR 407-047-0470), OTIS must send a Notice of Abuse Determination (as described in ORS 183.415), with a copy of the redacted abuse investigation report, to the respondent by:
    - (A) Regular mail.
    - (B) Certified mail with return receipt requested.
    - (C) Alternative methods such as fax or electronic mail only when the respondent has requested an alternate method.
- (4) OTIS must notify Department of Education: Office of Child Care must provide a unredacted copy of the abuse investigation report.
- (5) OTIS must notify the Department of Human Services: Self-Sufficiency Child Care Policy Unit must provide a unredacted copy of the abuse investigation report when the child care is a regulated subsidy program.
- (6) OTIS must make diligent efforts to notify the reporter, if contact information was provided, of the following information:
  - (a) Whether contact with the child was made, and
  - (b) Whether OTIS determined abuse occurred.
- (7) OTIS must notify the legal guardian of the alleged victim a notice of the abuse determination.
- (8) Others as required or otherwise authorized including, but not limited to:
  - (a) Appropriate personnel within the Department.
  - (b) The tribe (as provided under OAR chapter 413, division 115) when the OTIS investigator knows or has reason to know the alleged victim is an Indian child.
  - (c) Disability Rights Oregon, when a report of abuse is alleged to have occurred at a school or in an educational setting and the report involves a child with a disability (ORS 419B.035(1)).
  - (d) The Office of Developmental Disabilities Services (ODDS), when a report involves a home certified by ODDS or a child receiving services from ODDS.
  - (e) The Teacher Standards and Practices Commission, must be provided copy of the unredacted abuse investigation report if the Department believes the child care caregiver, household member, contractor, or volunteer is licensed or registered by the commission.
  - (f) Any individual, administrative hearings officer, court, agency, organization, or other entity when determined necessary under ORS 419B.035(3).

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 to 419B.050



ADOPT: 407-047-0500

RULE TITLE: Investigations in Child Care: Confidentiality

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule explains the confidentiality requirements of the information gathered and reports compiled during an OTIS investigation of a child care.

RULE TEXT:

Information gathered and records and reports compiled during an OTIS investigation are confidential and may be disclosed only as provided in ORS 419B.035. The identity of the person reporting abuse may not be disclosed.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 to 419B.050

ADOPT: 407-047-0510

RULE TITLE: Investigations in Child Care: Contested Case Hearings

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule defines the contested case hearing process for "founded" allegations of abuse in a child care.

RULE TEXT:

(1) This rule applies to contested case hearings on "Founded" child abuse determinations made by OTIS under OAR 407-047-0470.

(2) Contested case proceedings under this rule are conducted in accordance with the Attorney General's Model Rules in OAR chapter 137, division 003, except to the extent that OAR 407-047-0400 through 407-047-0520 are permitted to and provide for different procedures.

(3) A contested case hearing under this rule is not open to the public and is closed to nonparticipants, except nonparticipants may attend subject to the consent of the parties and OTIS and must adhere to applicable confidentiality laws.

(4) A respondent who receives a Notice of Abuse Determination under OAR 407-047-0500 may challenge that notice by filing a written, timely request for a contested case hearing. The request must be electronically submitted or postmarked to the Department of Human Services, Office of Training, Investigations and Safety, 201 High Street SE, Suite 500, Salem, Oregon within 30 calendar days of the date of the Notice of Abuse Determination.

(5) OTIS may dismiss a request for hearing as untimely if the respondent's written explanation for missing the hearing request deadline does not meet the criteria in OAR 137-003-0528(2) and (3). If there is a factual dispute regarding the missed deadline OTIS may refer the request for a limited contested case hearing about the reasons for missing the deadline.

(6) A respondent may withdraw a request for hearing at any time before a final order has been issued in the contested case.

(a) OTIS or the Office of Administrative Hearings (OAH) will send an order confirming the withdrawal of a hearing request to the last known address of the respondent.

(b) The respondent may cancel the withdrawal if a written cancellation of the withdrawal is electronically submitted or postmarked to OTIS no later than 10 business days from the date of the order confirming the withdrawal.

(c) A late cancellation of a withdrawal may be considered if the written cancellation of the withdrawal is sent to OTIS and electronically submitted or postmarked within the deadline set out in OAR 137-003-0675(1) from the date of the order confirming the withdrawal.

(d) OTIS will allow the late cancellation of a withdrawal filed within the deadline set out in OAR 137-003-0675(1) if the deadline to cancel the withdrawal was missed due to circumstances beyond the control of the respondent.

(7) OTIS will refer to OAH the issue of allowing the late cancellation of a withdrawal filed within the deadline set out in OAR 137-003-0675(1) if there is a factual dispute about whether the deadline to cancel the withdrawal was missed due to circumstances beyond the control of the respondent.

(8) An order dismissing a hearing request is issued when neither the respondent nor the respondent's representative appear at the time and place specified for the hearing. OTIS may reconsider and cancel the dismissal under OAR 137-003-0675 after a timely written request of the respondent on a showing that the respondent was unable to attend the hearing and unable to request a postponement from OAH for reasons beyond respondent's reasonable control. OTIS may refer the reconsideration decision to OAH.

(9) When OTIS refers a contested case under this rule to OAH, OTIS indicates on the referral whether OTIS is authorizing a proposed order, a proposed and final order (OAR 137-003-0645(4)), or a final order.

(a) When OTIS authorizes either a proposed order or a proposed and final order, the respondent may file written exceptions and written argument to be considered by OTIS. The exceptions and argument must be electronically

submitted or postmarked or received at the location indicated in the OAH order no later than the 20th calendar day after service of the proposed order or proposed and final order.

(b) When OTIS authorizes proposed and final orders, if the respondent does not submit timely exceptions or argument following a proposed and final order, the proposed and final order becomes a final order on the 21st calendar day after service of the proposed and final order unless OTIS has issued a revised order or has notified the respondent and OAH that OTIS will issue the final order. When OTIS receives timely written exceptions or argument, OTIS issues the final order, unless OTIS requests that OAH issue the final order under OAR 137-003-0655.

(c) If in a contested case hearing OAH is authorized to issue a final order on behalf of OTIS, OTIS may issue the final order in the case of default.

(10) OTIS has adopted the following exceptions to the Attorney General's Model Rules due to caseload volume and because the model discovery procedures would unduly complicate or interfere with the hearing process:

(a) Upon request of the party or respondent, OTIS provides work contact information (telephone number and address) for any Department employees expected to testify at the hearing as witnesses, except rebuttal witnesses.

(b) Except as provided in subsection (a) of this section, OTIS and any party or respondent in the contested case are not required to provide the telephone numbers and addresses of witnesses.

STATUTORY/OTHER AUTHORITY: ORS 183.341, 409.050

STATUTES/OTHER IMPLEMENTED: ORS 183.411-183.471, 419B.005 to 419B.050

ADOPT: 407-047-0520

RULE TITLE: Investigations in Child Care: Lay Representative

NOTICE FILED DATE: 04/09/2020

RULE SUMMARY: The Department of Human Services has moved child abuse investigations of child care providers from DHS: Child Welfare to DHS: The Office of Training Investigations and Safety (OTIS). This rule describes the authority and scope of a Department employee serving as a lay representative in a contested case hearing.

RULE TEXT:

(1) Subject to the approval of the Attorney General, an officer or employee of the Department is authorized to appear on behalf of OTIS in a contested case hearing conducted by the Office of Administrative Hearings under OAR 407-047-0510.

(2) A Department officer or employee acting as the Department's representative may not make legal argument on behalf of OTIS.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of OTIS to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to OTIS; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of OTIS in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(3) When an officer or employee appears on behalf of OTIS, the administrative law judge shall advise the Department's representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.

(4) If the administrative law judge determines that statements or objections made by the Department representative appearing under section (1) of this rule involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the Department representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) A Department representative appearing under section (1) of this rule must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available at <http://www.doj.state.or.us>.

(6) When a Department officer or employee represents OTIS in a contested case hearing under OAR 407-047-0510, requests for admission and written interrogatories are not permitted. OTIS adopts this exception to the Attorney General's Model Rules due to caseload volume and because these matters would unnecessarily complicate the hearing process.

STATUTORY/OTHER AUTHORITY: ORS 183.341, 409.050

STATUTES/OTHER IMPLEMENTED: ORS 183.411-183.471, 419B.005 to 419B.050